

12/06/10
11:01:42OREGON DEPARTMENT OF CORRECTIONS
Institution Division FACESHEPAGE: 001
OPS532B
HOGELANV

Location: EOCI

SID#: 12599830

Court Name: ROSS, JAMES ARTHUR

True Name:

Birth Date: 01/11/1979

Sex/Race: M/W

Hair/Eyes: BROWN/BROWN

Height/Weight: 5'10"/180 lbs

Orig Adm Date: 09/02/2004

Curr Adm Date: 09/02/2004

Proj Rele Date: 02/22/2014

Phys Rele Date:

Maximum Date: 02/22/2014

Parole Release:

Good Time Date:

SG Earned Date: 02/22/2014

SG Proj Date: 02/22/2014

	01	*SG	02 CS01*SG	03 CS01*SG	04 CS03*SG	05 CS04*SG
Offense (abbrev)	MURD AG AT	KID I	KID I	RAPE I	SODO I	
137.635/137.700	N/Y	N/Y	N/Y	N/Y	N/Y	
Sent Reduct/Ovrd	R-00/N	R-00/N	R-00/N	R-00/N	R-00/N	
Sentence yy-mm-dd	000-120-000	000-090-000	000-090-000	000-100-000	000-100-000	
Court docket#	04CR0429FE	04CR0429FE	04CR0429FE	04CR0429FE	04CR0429FE	
Dockt county/count	DOUG/1	DOUG/2	DOUG/3	DOUG/4	DOUG/5	
Name of judge	WALKER	WALKER	WALKER	WALKER	WALKER	
Date convicted	08/31/2004	08/31/2004	08/31/2004	08/31/2004	08/31/2004	
Sentence begin dt.	09/02/2004	09/02/2004	09/02/2004	09/02/2004	09/02/2004	
Tolling date		02/22/2014	02/22/2014	08/22/2021	12/22/2029	
Time served credit	00191					
Minimum 137.700	000-120-000	000-090-000	000-090-000	000-100-000	000-100-000	
Minimum 137 date	02/22/2014	08/22/2021	08/22/2021	12/22/2029	04/22/2038	
GT-ET credit/Lost						
Inop/Merit GT						
MAX sent date	02/22/2014	08/22/2021	08/22/2021	12/22/2029	04/22/2038	
SG earned date	02/22/2014	08/22/2021	08/22/2021	12/22/2029	04/22/2038	
Proj rele/GT date	02/22/2014	08/22/2021	08/22/2021	12/22/2029	04/22/2038	
Termination date		11/09/2010	11/09/2010			
Termination code		RSNT	RSNT			
PPS sent length	000-036-000	000-036-000	000-036-000	000-140-000	000-140-000	

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C O N T I N U E D

* * *

Respondent's Exhibit

#101

USDC Case No. 10-1440-HO

12/06/10
11:01:42OREGON DEPARTMENT OF CORRECTIONS
Institution Division FACESHEETPAGE: 002
OPS532B

ROSS, JAMES ARTHUR

SID#: 12599830

	06 CS04*SG	07 CS06*SG	08 CS06*SG	09 SG
Offense (abbrev)	SODO I	ASSA II	ASSA II	ASSA IV CF
137.635/137.700	N/Y	N/Y	N/Y	N/N
Sent Reduct/Ovrd	R-00/N	R-00/N	R-00/N	R-00/N
Sentence yy-mm-dd	000-100-000	000-070-000	000-070-000	000-000-090
Court docket#	04CR0429FE	04CR0429FE	04CR0429FE	04CR0429FE
Docket county/count	DOUG/6	DOUG/7	DOUG/8	DOUG/9
Name of judge	WALKER	WALKER	WALKER	WALKER
Date convicted	08/31/2004	08/31/2004	08/31/2004	08/31/2004
Sentence begin dt.	09/02/2004	09/02/2004	09/02/2004	09/02/2004
Tolling date	12/22/2029	04/22/2038	04/22/2038	
Time served credit				00090
Minimum 137.700	000-100-000	000-070-000	000-070-000	
Minimum 137 date	04/22/2038	02/22/2044	02/22/2044	
GT-ET credit/Lost				
Inop/Merit GT				
MAX sent date	04/22/2038	02/22/2044	02/22/2044	09/02/2004
SG earned date	04/22/2038	02/22/2044	02/22/2044	09/02/2004
Proj rele/GT date	04/22/2038	02/22/2044	02/22/2044	09/02/2004
Termination date				09/02/2004
Termination code				POST
PPS sent length	000-240-000	000-036-000	000-036-000	000-240-000

* * * * * E N D O F F A C E S H E E T * * * * *

11/09/2010 07:53 541-881-5479

SRCI RECORDS

PAGE 03/14

Nov. 8. 2010 4:28PM MALHEUR CIRCUIT COURT

No. 3166 P. 1

Entered/Docketed

Date 11/8/10FILED
Malheur County Circuit CourtNOV -8 2010
Time: 4:14p .m By VAIN THE STATE COURTS OF THE STATE OF OREGON
FOR THE COUNTY OF MALHEUR

9	JAMES ARTHUR ROSS.	)	Case 05-08-4630M
10)	
	Plaintiff,	)	SUPPLEMENTAL JUDGMENT
11	vs.	)	ORDER GRANTING POST
12	JEAN HILL, Superintendent, Snake	)	CONVICTION RELIEF AND
13	River Correctional Institution.	)	REMANDING CASE FOR
14	Defendants.	)	RESENTENCING

The above-entitled case involves a Petition for Post Conviction Relief. On May 19, 2010, the Oregon Court of Appeals, in case number A135040 reversed the Judgment of the trial Court as to a portion of that judgment relating to the issue of merger of the two kidnapping charges, and ordered that Judgment be entered granting post conviction relief as to that issue, and remanding the case for resentencing by the trial court on the two kidnapping charges. The Court of Appeals affirmed the Post Conviction trial Court's Judgment as to all other issues.

Therefore, it is hereby ordered that the Judgment of the trial court dated February 23, 2007, is hereby vacated in part, and post conviction relief is hereby granted in accordance with the attached opinion of the Court of Appeals as to the issue of merger of the two convictions for Kidnapping. This

Copies

AG	ATY	PTF	SRCI	TC	CUA
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

1/18

11/09/2010 07:53 541-881-5479

SRCI RECORDS


PAGE 04/14

Nov. 8. 2010 4:29PM 14TH CIRCUIT COURT

No. 3166 P. 2

1 matter is therefore remanded to the Circuit Court for Douglas County for resentencing as to the
2 kidnapping counts only.

3
4 DONE AND DATED this 9th day of November, 2010.

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6 
7 Patricia Sullivan, Circuit Court Judge

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11/09/2010 07:53 541-881-5479

SRCI RECORDS

PAGE 05/14

Nov. 8, 2010 4:29PM
 Entered/Unlocked
 Date 11/8/10

MALHEUR CIRCUIT COURT

No. 3166 P. 3

IN THE COURT OF APPEALS OF THE STATE OF OREGON
 Malheur County Circuit Court

JAMES ARTHUR ROSS,
 Petitioner-Appellant,

v.

NDV - 8 2010
 Time: 10:24 By UA

JEAN HILL, Superintendent, Snake River Correctional Institution,
 Defendant-Respondent.

Malheur County Circuit Court
 05084630M

A135040

APPELLATE JUDGMENT and SUPPLEMENTAL JUDGMENT

Joseph F. Cenicerros, Senior Judge.

Submitted on July 21, 2009.

Patrick M. Ebbett filed the opening brief for appellant. James Arthur Ross filed the supplemental brief pro se.

Judy C. Lucas, Senior Assistant Attorney General, filed the brief for respondent.

Before Landau, Presiding Judge; Brewer, Chief Judge; and Schuman, Judge.

LANDAU, P. J.

Reversed and remanded with instructions to enter judgment granting post-conviction relief and resentencing on kidnapping convictions; otherwise affirmed.

DESIGNATION OF PREVAILING PARTY AND AWARD OF COST

Prevailing party: Appellant

☒ Costs allowed, payable by Respondent.**MONEY AWARD**

Creditor(s): James Arthur Ross

Attorney: Andrew S. Chilton, 714 SW 20th Pl, Portland OR 97205

Debtor(s): Jean Hill, Superintendent, Snake River Correctional Institution

Attorney: Judy C. Lucas

Costs: \$100.00

Total Amount: \$100.00

Interest: Simple, 9% per annum, from the date of this appellate judgment

Appellate Judgment

Effective Date: November 3, 2010

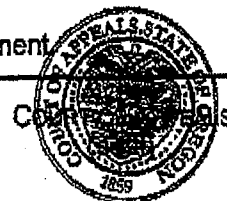
APPELLATE JUDGMENT and SUPPLEMENTAL JUDGMENT

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section

Supreme Court Building, 1183 State Street, Salem OR 97301-2563

Page 1 of 1

THIS IS THE APPELLATE JUDGMENT OF
 THE APPELLATE COURTS AND SHOULD
 BE ENTERED PURSUANT TO ORS 10.458.



11/09/2010 07:53 541-881-5479

SRCI RECORDS

PAGE 13/14

Nov. 8, 2010 4:32PM
V9.11.12.31 2007 10:12AMMALHEUR CIRCUIT COURT
MALHEUR CIRCUIT COURTNo. 3166 P. 11
No. 1040 P. 11Entered/Doctored
Date 2/23/07FILED
Malheur County Circuit Court

FEB 23 2007

Time: 1:52 P.M. By NAIN THE CIRCUIT COURTS OF THE STATE OF OREGON
FOR THE COUNTY OF MALHEUR

JAMES ARTHUR ROSS)

SID #12598830)

Case No. 05-08-4630M

Petitioner/Plaintiff,)

vs.)

GENERAL JUDGMENT

JEAN HILL, Superintendent,)

Snake River Correctional Institution,)

Defendant.)

The above-entitled matter came before the Court on January 23, 2006
October 11, 2005
for hearing on Trial to Court.

ORDER(S)

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

() The Petition for Post Conviction Relief () The Petition for Writ of Habeas Corpus Relief is
() allowed () denied based upon the following findings and conclusions:Petitioner failed to prove each and every allegation of the Petition.
Some claims cannot be raised in Post Conviction relief was adequate
and competent as required in Oregon especially because the2. This matter involves a () Federal () State Constitutional issue(s). All questions were
presented and decided.facts of the case were no agreement and the Petitioner entered
a voluntary knowing and intelligent plea to charges.

Judgment in Prison Litigation Case 12/2001

Page 1 of 2

COPIES

AG ☒ AFY ☒ PTF ☒ SPT ☒
2/23/07

1 3. This order shall constitute a final judgment for purposes of appellate review and for
2 purposes of res judicata.

3 //

4 GENERAL JUDGMENT

5 FOR THE REASONS STATED ON THE RECORD, IT IS FURTHER ORDERED THAT
6 JUDGMENT BE, AND HEREBY IS GIVEN IN FAVOR OF:

7 PLAINTIFF [];

8 DEFENDANT [X]

9 FOR THE REASONS STATED ON THE RECORD, IT IS FURTHER ORDERED THAT
10 JUDGMENT INCLUDE:

11 INDIGENT ATTORNEY FEES IN THE SUM OF \$ _____;

12 and/or

13 COSTS IN THE SUM OF \$ _____;

14 //

15 MONEY AWARD

16 Judgment Creditor: _____

17 Judgment Debtor: _____

18 Amount of Judgment: Court Costs: \$ _____

19 Attorney Fees: \$ _____

20 DONE AND DATED this 23rd day of January, 2007.

21 Joseph J. Caniceros
22 Honorable Joseph Caniceros

23 Senior Circuit Court Judge

24 ¹ Attorney fees and/or costs shall be become a lien against the Plaintiff's Department of Corrections Trust Account,
25 payable as funds may become available in such account for payments toward or satisfaction of said lien. Any sum remaining
26 unpaid upon release of Plaintiff shall be paid in payments as set by the Plaintiff's post-prison/parole supervision officer, said
27 payments to be set according to the financial ability of Plaintiff make such payments.

25

IN THE STATE OF OREGON FOR
DOUGLAS COUNTY CIRCUIT COURT

STATE OF OREGON,
Plaintiff,
vs.
James Arthur Ross,
Defendant

Case No.: 04CR0429FE
JUDGMENT
Case File Date: 01/25/2004
District Attorney File #: F04022570
Proceeding Date: 08/31/2004
AUG 31 2004
DOUGLAS COUNTY
CIRCUIT COURT

DEFENDANT

True Name: James Arthur Ross
Date of Birth: 01/11/79

Sex: Male

Fingerprint Control No (FPN): 42864054

HEARING

Judge: Stephen S Walker

Media No.: 404 9:36

Court Reporter: - CD NL

Defendant appeared in person and was in custody. The defendant was represented by Attorney(s) Daniel Bouck, OSB Number 89024.

Plaintiff appeared by and through Richard L Wesenberg Jr, OSB Number 92155.

COUNT(S)

It is adjudged that the defendant has been convicted on the following count(s):

Count 1: Attempt A/Fel Aggravated Murder +.

Count number 1, Attempt A/Fel Aggravated Murder +, ORS 1614052B, a Class B Felony, committed on or about 02/23/2004.

Conviction is based upon a plea of No Contest on 06/10/2004.

Sentencing Guidelines

Crime Severity Classification (CSC) on Count Number 1 is 10 and the Criminal History Classification (CHC) is H.

Incarceration

Defendant is sentenced to the custody of Oregon Department of Corrections for a period of 120 month(s). Defendant is remanded to the custody of the Douglas County Sheriff for transportation to the Oregon Department of Corrections for service of this sentence.

Defendant may receive credit for time served. Defendant may not be considered by the executing or releasing authority for any form of alternative to incarceration or alternative sanctions as specified in ORS 137.750-137.752.

Defendant is recommended for the following program(s) and/or treatment(s) while incarcerated:

- Defendant is eligible for programs while incarcerated, with the exceptions of programs which grant early release.

Post-Prison Supervision

The term of Post-Prison Supervision is 36 month(s). If defendant violates any of the conditions of post-prison supervision, the defendant shall be subject to sanctions including the possibility of additional imprisonment in accordance with the rules of the State Sentencing Guidelines Board.

Count 2: Kidnapping-1 +.

Count number 2, Kidnapping-1 +, ORS 163235, a Class A Felony, committed on or about 02/23/2004.

Conviction is based upon a plea of No Contest on 06/10/2004.

Sentencing Guidelines

Crime Severity Classification (CSC) on Count Number 2 is 10 and the Criminal History Classification (CHC) is I.

Incarceration

Defendant is sentenced to the custody of Oregon Department of Corrections for a period of 90 month(s). Defendant is remanded to the custody of the Douglas County Sheriff for transportation to the Oregon Department of Corrections for service of this sentence.

Defendant may receive credit for time served. Defendant may not be considered by the executing or releasing authority for any form of alternative to incarceration or alternative sanctions as specified in ORS 137.750-137.752 except Defendant is eligible for programs while incarcerated, with the exceptions of programs which grant early release. and shall pay any required per diem fees.

For the reasons stated on the record this sentence shall be consecutive to sentence(s) imposed herein on Count 1. This sentence shall be concurrent with the following cases: this case Count 3.

Post-Prison Supervision

The term of Post-Prison Supervision is 36 month(s). If defendant violates any of the conditions of post-prison supervision, the defendant shall be subject to sanctions including the possibility of additional imprisonment in accordance with the rules of the State Sentencing Guidelines Board.

Count 3: Kidnapping-1 +.

Count number 3, Kidnapping-1 +, ORS 163235, a Class A Felony, committed on or about 02/23/2004.

Conviction is based upon a plea of No Contest on 06/10/2004.

Sentencing Guidelines

Crime Severity Classification (CSC) on Count Number 3 is 10 and the Criminal History Classification (CHC) is I.

Incarceration

Defendant is sentenced to the custody of Oregon Department of Corrections for a period of 90 month(s). Defendant is remanded to the custody of the Douglas County Sheriff for transportation to the Oregon Department of Corrections for service of this sentence.

Defendant may receive credit for time served. Defendant may not be considered by the executing or releasing authority for any form of alternative to incarceration or alternative sanctions as specified in ORS 137.750-137.752 except Defendant is eligible for programs while incarcerated, but not with those programs which grant early release. and shall pay any required per diem fees.

This sentence shall be consecutive to the sentence(s) on the following cases: this case Counts 1, 4, 5, 6, 7, 8, 9, 10, 11, 12. This sentence shall be concurrent with the following cases: this case Count 2.

Post-Prison Supervision

The term of Post-Prison Supervision is 36 month(s). If defendant violates any of the conditions of post-prison supervision, the defendant shall be subject to sanctions including the possibility of additional imprisonment in accordance with the rules of the State Sentencing Guidelines Board.

Count 4: Rape-1 +.

Count number 4, Rape-1 +, ORS 163375, a Class A Felony, committed on or about 02/23/2004.

Conviction is based upon a plea of No Contest on 06/10/2004.

Sentencing Guidelines

Crime Severity Classification (CSC) on Count Number 4 is 10 and the Criminal History Classification (CHC) is I.

Incarceration

Defendant is sentenced to the custody of Oregon Department of Corrections for a period of 100 month(s).

Defendant may receive credit for time served. Defendant may not be considered by the executing or releasing authority for any form of alternative to incarceration or alternative sanctions as specified in ORS 137.750-137.752 except Defendant is eligible for programs while incarcerated, but not with those programs which grant early release. and shall pay any required per diem fees.

This sentence shall be consecutive to the sentence(s) on the following cases: this case Counts 1, 2, 3, 5-12.

Post-Prison Supervision

The term of Post-Prison Supervision is 140 month(s) minus time actually served pursuant to ORS 144.103. If defendant violates any of the conditions of post-prison supervision, the defendant shall be subject to sanctions including the possibility of additional imprisonment in accordance with the rules of the State Sentencing Guidelines Board.

Statutory Provisions

Defendant is ordered to submit blood or buccal sample and thumbprint pursuant to ORS 137.076. Defendant is ordered to submit to testing for HIV and other communicable diseases pursuant to ORS 135.139. Defendant is ordered to register as a sex offender pursuant to Oregon Revised Statutes.

Count 5: Sodomy-1 +.

Count number 5, Sodomy-1 +, ORS 163405, a Class A Felony, committed on or about 02/23/2004.

Conviction is based upon a plea of No Contest on 06/10/2004.

Sentencing Guidelines

Crime Severity Classification (CSC) on Count Number 5 is 10 and the Criminal History Classification (CHC) is I.

Incarceration

Defendant is sentenced to the custody of Oregon Department of Corrections for a period of 100 month(s).

Defendant may receive credit for time served. Defendant may not be considered by the executing or releasing authority for any form of alternative to incarceration or alternative sanctions as specified in ORS 137.750-137.752 except Defendant is eligible for programs while incarcerated, but not with those programs which grant early release. and shall pay any required per diem fees.

This sentence shall be consecutive to the sentence(s) on the following cases: this case Counts 1, 2, 3, 4, 7-12.

Post-Prison Supervision

The term of Post-Prison Supervision is 140 month(s) minus time actually served pursuant to ORS 144.103. If defendant violates any of the conditions of post-prison supervision, the defendant shall be subject to sanctions including the possibility of additional imprisonment in accordance with the rules of the State Sentencing Guidelines Board.

Statutory Provisions

Defendant is ordered to submit blood or buccal sample and thumbprint pursuant to ORS 137.076. Defendant is ordered to submit to testing for HIV and other communicable diseases pursuant to ORS 135.139. Defendant is ordered to register as a sex offender pursuant to Oregon Revised Statutes.

Count 6: Sodomy-1 +.

Count number 6, Sodomy-1 +, ORS 163405, a Class A Felony, committed on or about 02/23/2004.

Conviction is based upon a plea of Guilty on 06/10/2004.

Sentencing Guidelines

Crime Severity Classification (CSC) on Count Number 6 is 10 and the Criminal History Classification (CHC) is I.

Incarceration

Defendant is sentenced to the custody of Oregon Department of Corrections for a period of 100 month(s). Defendant is remanded to the custody of the Douglas County Sheriff for transportation to the Oregon Department of Corrections for service of this sentence.

Defendant may receive credit for time served. Defendant may not be considered by the executing or releasing authority for any form of alternative to incarceration or alternative sanctions as specified in ORS 137.750-137.752 except Defendant is eligible for programs while incarcerated, but not with those programs which grant early release. and shall pay any required per diem fees.

This sentence shall be consecutive to the sentence(s) on the following cases: this case Counts 1, 2, 3, 4, 7-12. This sentence shall be concurrent with the following cases: this case Count 5.

Post-Prison Supervision

The term of Post-Prison Supervision is 240 month(s) minus time actually served pursuant to ORS 144.103. If defendant violates any of the conditions of post-prison supervision, the defendant shall be subject to sanctions including the possibility of additional imprisonment in accordance with the rules of the State Sentencing Guidelines Board.

Statutory Provisions

Defendant is ordered to submit blood or buccal sample and thumbprint pursuant to ORS 137.076. Defendant is ordered to submit to testing for HIV and other communicable diseases pursuant to ORS 135.139. Defendant is ordered to register as a sex offender pursuant to Oregon Revised Statutes.

Count 7: Assault-2 +.

Count number 7, Assault-2 +, ORS 163175, a Class B Felony, committed on or about 02/23/2004.

Conviction is based upon a plea of Guilty on 06/10/2004.

Sentencing Guidelines

Crime Severity Classification (CSC) on Count Number 7 is 9 and the Criminal History Classification (CHC) is I.

Incarceration

Defendant is sentenced to the custody of Oregon Department of Corrections for a period of 70 month(s). Defendant is remanded to the custody of the Douglas County Sheriff for transportation to the Oregon Department of Corrections for service of this sentence.

Defendant may receive credit for time served. Defendant may not be considered by the executing or releasing authority for any form of alternative to incarceration or alternative sanctions as specified in ORS 137.750-137.752 except Defendant is eligible for programs while incarcerated, but not with those programs which grant early release. and shall pay any required per diem fees.

This sentence shall be consecutive to the sentence(s) on the following cases: this case Counts 1-6 and 9-12. This sentence shall be concurrent with the following cases: this case Count 8.

Post-Prison Supervision

The term of Post-Prison Supervision is 36 month(s). If defendant violates any of the conditions of post-prison supervision, the defendant shall be subject to sanctions including the possibility of additional imprisonment in accordance with the rules of the State Sentencing Guidelines Board.

Count 8: Assault-2.

Count number 8, Assault-2, ORS 163175, a Class B Felony, committed on or about 02/23/2004.

Conviction is based upon a plea of Guilty on 06/10/2004.

Sentencing Guidelines

Crime Severity Classification (CSC) on Count Number 8 is 9 and the Criminal History Classification (CHC) is I.

Incarceration

Defendant is sentenced to the custody of Oregon Department of Corrections for a period of 70 month(s). Defendant is remanded to the custody of the Douglas County Sheriff for transportation to the Oregon Department of Corrections for service of this sentence.

Defendant may receive credit for time served. Defendant may not be considered by the executing or releasing authority for any form of alternative to incarceration or alternative sanctions as specified in ORS 137.750-137.752 except Defendant is eligible for programs while incarcerated, but not with those programs which grant early release. and shall pay any required per diem fees.

This sentence shall be consecutive to the sentence(s) on the following cases: this case Counts 1-6 and 9-12. This sentence shall be concurrent with the following cases: this case Count 7.

Post-Prison Supervision

The term of Post-Prison Supervision is 36 month(s). If defendant violates any of the conditions of post-prison supervision, the defendant shall be subject to sanctions including the possibility of additional imprisonment in accordance with the rules of the State Sentencing Guidelines Board.

Count 9: Assault-4, Sec. 3.

Count number 9, Assault-4, Sec. 3, ORS 1631603, a Class C Felony, committed on or about 02/23/2004.

Conviction is based upon a plea of No Contest on 06/10/2004.

Sentencing Guidelines

Crime Severity Classification (CSC) on Count Number 9 is 6 and the Criminal History Classification (CHC) is I.

Incarceration

Defendant is sentenced to the custody of Jail for a period of 90 day(s). Defendant is remanded to the custody of the Douglas County Sheriff for transportation to the Supervisory Authority for service of this sentence.

Defendant may receive credit for time served. Defendant may not be considered by the executing or releasing authority for any form of alternative to incarceration or alternative sanctions as specified in ORS 137.750-137.752 except Defendant is eligible for programs while incarcerated, but not with those programs which grant early release. and shall pay any required per diem fees.

This sentence shall be concurrent with all previously imposed sentences.

Count 10: Strangulation.

Count number 10, Strangulation, ORS 163187, a Class A Misdemeanor, committed on or about 02/23/2004.

Conviction is based upon a plea of Guilty on 06/10/2004.

Incarceration

Defendant is sentenced to the custody of Jail for a period of 1 year(s). Defendant is remanded to the custody of the Douglas County Sheriff for transportation to the Supervisory Authority for service of this sentence.

Defendant may receive credit for time served. Defendant may not be considered by the executing or releasing authority for any form of alternative to incarceration or alternative sanctions as specified in ORS 137.750-137.752 except Defendant is eligible for programs while incarcerated, but not with those programs which grant early release. and shall pay any required per diem fees.

This sentence shall be concurrent with all previously imposed sentences.

Count 11: Menacing.

Count number 11, Menacing, ORS 163190, a Class A Misdemeanor, committed on or about 02/23/2004.

Conviction is based upon a plea of Guilty on 06/10/2004.

Incarceration

Defendant is sentenced to the custody of Jail for a period of 1 year(s). Defendant is remanded to the custody of the Douglas County Sheriff for transportation to the Supervisory Authority for service of this sentence.

Defendant may receive credit for time served. Defendant may not be considered by the executing or releasing authority for any form of alternative to incarceration or alternative sanctions as specified in ORS 137.750-137.752 except Defendant is eligible for programs while incarcerated, but not with those programs which grant early release. and shall pay any required per diem fees.

This sentence shall be concurrent with all previously imposed sentences.

Count 12: Interfere With Making Report.

Count number 12, Interfere With Making Report, ORS 165572, a Class A Misdemeanor, committed on or about 02/23/2004.

Conviction is based upon a plea of No Contest on 06/10/2004.

Incarceration

Defendant is sentenced to the custody of Jail for a period of 1 year(s). Defendant is remanded to the custody of the Douglas County Sheriff for transportation to the Supervisory Authority for service of this sentence.

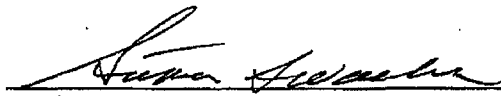
Defendant may receive credit for time served. Defendant may not be considered by the executing or releasing authority for any form of alternative to incarceration or alternative sanctions as specified in ORS 137.750-137.752 except Defendant is eligible for programs while incarcerated, but not with those programs which grant early release. and shall pay any required per diem fees.

Court address:

Douglas County Circuit Court
1036 SE Douglas
Roseburg, OR 97470

Dated the 31 day of August, 2004

Signed:


Stephen S Walker



*amended -
- RW
K. Madison*

04/11/01 PM 2:57

DOUGLAS COUNTY
TRIAL COURTS

F-04-2257-1/CN 42864054/04CR0429FE

DOUGLAS COUNTY SHERIFF'S OFFICE, Trial Attorney: Richard Wesenberg

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR DOUGLAS COUNTY

THE STATE OF OREGON,

Plaintiff,

vs.

JAMES ARTHUR ROSS,

DEFENDANT.

AMENDED

I N D I C T M E N T

Case No. 04CR0429FE

JAMES ARTHUR ROSS, DOB: 01/11/1979

is accused by the Grand Jury for the County of Douglas, State of Oregon, by this indictment of the crime of

- COUNT 1: ATTEMPTED AGGRAVATED MURDER, ORS 163.095, ORS 161.405
On or between February 23, 2003 and February 24, 2004
- COUNT 2: KIDNAPPING IN THE FIRST DEGREE, ORS 163.235
On or between February 23, 2003 and February 24, 2004
- COUNT 3: KIDNAPPING IN THE FIRST DEGREE, ORS 163.235
On or between February 23, 2003 and February 24, 2004
- COUNT 4: RAPE IN THE FIRST DEGREE, ORS 163.375,
On or between February 23, 2004 and February 24, 2004
- COUNT 5: SODOMY IN THE FIRST DEGREE, ORS 163.405,
On or between February 23, 2004 and February 24, 2004
- COUNT 6: SODOMY IN THE FIRST DEGREE, ORS 163.405,
On or between February 23, 2004 and February 24, 2004
- COUNT 7: ASSAULT IN THE SECOND DEGREE, ORS 163.175,
On or between February 23, 2004 and February 24, 2004
- COUNT 8: ASSAULT IN THE SECOND DEGREE, ORS 163.175,
On or between February 23, 2004 and February 24, 2004
- COUNT 9: FELONY ASSAULT IN THE FOURTH DEGREE,
On or between February 23, 2004 and February 24, 2004
- COUNT 10: STRANGULATION, ORS 163.187,
On or between February 23, 2004 and February 24, 2004
- COUNT 11: MENACING, ORS 163.190,
On or between February 23, 2004 and February 24, 2004
- COUNT 12: INTERFERENCE WITH MAKING A REPORT, ORS 162.572,
On or between February 23, 2004 and February 24, 2004

COMMITTED AS FOLLOWS:

AMENDED INDICTMENT/JAMES ARTHUR ROSS

COUNT 1

The said JAMES ARTHUR ROSS, between the 23rd day of February, 2004 and 24th day of February, 2004, in said County of Douglas and State of Oregon, then and there being, did unlawfully and intentionally, in an effort to conceal the commission of the crime of Sodomy in the First Degree, attempted to cause the death of Naomi Fay Ross, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Oregon;

no contest

COUNT 2

And the said defendant, between the 23rd day of February, 2004 and 24th day of February, 2004, in said County of Douglas and State of Oregon, then and there being, did unlawfully and knowingly, without consent or legal authority, take Naomi Fay Ross, from one place to another, with intent to interfere substantially with the said Naomi Fay Ross' personal liberty, and with the purpose of causing physical injury to Naomi Fay Ross, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Oregon;

no contest

COUNT 3

And the said defendant, between the 23rd day of February, 2004 and 24th day of February, 2004, in said County of Douglas and State of Oregon, then and there being, did unlawfully and knowingly, without consent or legal authority, take Naomi Fay Ross, from one place to another, with intent to interfere substantially with the said Naomi Fay Ross' personal

AMENDED INDICTMENT, JAMES ARTHUR ROSS

1
2 liberty, and with the purpose of terrorizing Naomi Fay Ross, contrary to
3 the statutes in such cases made and provided and against the peace and
4 dignity of the State of Oregon;

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7 COUNT 4

8 And the said defendant, between the 23rd day of February, 2004 and
9 24th day of February, 2004, in said County of Douglas and State of Oregon,
10 then and there being, did unlawfully and knowingly, by forcible
11 compulsion, engage in sexual intercourse with Naomi Ross.

12 The state further alleges that during the course of the
13 above-described offense, the defendant used or threatened to use a weapon.

14 The state further alleges that during the course of the
15 above-described offense, the defendant caused or threatened to cause
16 serious physical injury, contrary to the statutes in such cases made and
17 provided and against the peace and dignity of the State of Oregon;

18
19 COUNT 5

20 And the said defendant, on or between the 23rd day of February,
21 2004 and the 24th day of February, 2004, in Douglas County, Oregon, did
22 unlawfully and knowingly, by forcible compulsion, engage in deviate
23 sexual intercourse with Naomi Ross.

24 The state further alleges that during the course of the
25 above-described offense, the defendant used or threatened to use a weapon.

AMENDED INDICTMENT, JAMES ARTHUR ROSS

1
2 The state further alleges that during the course of the
3 above-described offense, the defendant caused or threatened to cause
4 serious physical injury, contrary to the statutes in such cases made and
5 provided and against the peace and dignity of the State of Oregon;

6
7
8 COUNT 6

9 And the said defendant, on or between the 23rd day of February,
10 2004 and the 24th day of February, 2004, in Douglas County, Oregon, did
11 unlawfully and knowingly, by forcible compulsion, engage in deviate sexual
12 intercourse with Naomi Ross. *quitting*

13 The state further alleges that during the course of the
14 above-described offense, the defendant used or threatened to use a weapon.

15 The state further alleges that during the course of the
16 above-described offense, the defendant caused or threatened to cause
17 serious physical injury, contrary to the statutes in such cases made and
18 provided and against the peace and dignity of the State of Oregon;

19
20
21 COUNT 7

22 And the said defendant, on or between the 23rd day of February,
23 2004 and the 24th day of February, 2004, in Douglas County, Oregon, did
24 unlawfully and intentionally cause serious physical injury to Naomi Ross,
25 contrary to the statutes in such cases made and provided and against the
26 peace and dignity of the State of Oregon; *quitting*

AMENDED INDICTMENT: JAMES ARTHUR ROSS

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COUNT 8

And the said defendant, on or between the 23rd day of February, 2004 and the 24th day of February, 2004, in Douglas County, Oregon, did unlawfully and knowingly cause physical injury to Naomi Ross by means of a dangerous weapon, to-wit: a hand gun, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Oregon;

GUILTY

COUNT 9

And the said defendant, on or between the 23rd day of February, 2004 and the 24th day of February, 2004, in Douglas County, Oregon, did unlawfully and intentionally cause physical injury to Naomi Ross, and the assault was witnessed by Riley Ross, the minor child of Naomi Ross, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Oregon;

GUILTY

COUNT 10

And the said defendant, on or between the 23rd day of February, 2004 and the 24th day of February, 2004, in Douglas County, Oregon, did unlawfully and knowingly impede the normal breathing of Naomi Ross by blocking the mouth of Naomi Ross, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Oregon;

GUILTY

AMENDED INDICTMENT/JAMES ARTHUR ROSS

COUNT 11

And the said defendant, on or between the 23rd day of February, 2004 and the 24th day of February, 2004, in Douglas County, Oregon, did unlawfully and intentionally attempt to place Naomi Ross in fear of imminent serious physical injury by threatening to kill her with a weapon in his possessin, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Oregon;

60147

COUNT 12

And the said defendant, on or between the 23rd day of February, 2004 and the 24th day of February, 2004, in Douglas County, Oregon, did unlawfully, by interfering with a telephone, intentionally prevent another person from making a report to a 9-1-1 reporting system, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Oregon.

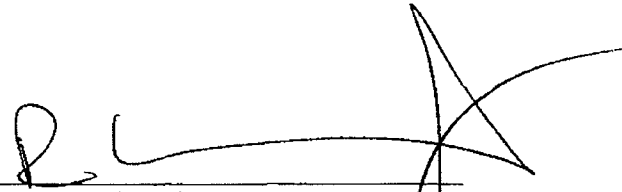
no contest

Dated at Roseburg, Douglas County, Oregon this 30th day of March, 2004.

AMENDED INDICTMENT / JAMES ARTHUR ROSS

Witnesses examined before the Grand Jury

JEFF AALBERG,
NAOMI ROSS (BY AFF)
ANGIE BORIGO,
JOE PERKINS
LESABETH TITUS
NAOMI ROSS


Deputy District Attorney

JEFFREY AALBERG, JR.

A TRUE BILL

Security Agreement Amount \$ _____


s/ Jarrod Palmer

Foreman of the Grand Jury



2-26.04
RLW
CUSTODY
MASH

FILED

04 FEB 27 PM 1:51

DOUGLAS COUNTY
TRIAL COURTS

F-04-2257-1/CN 42864054/04CR0429FE

DOUGLAS COUNTY SHERIFF'S OFFICE, Trial Attorney: Richard Wesenberg

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR DOUGLAS COUNTY

THE STATE OF OREGON,)	
Plaintiff,)	
	)	I N D I C T M E N T
vs.)	
JAMES ARTHUR ROSS,	)	Case No. 04CR0429FE
DEFENDANT.)	

JAMES ARTHUR ROSS, DOB: 01/11/1979

is accused by the Grand Jury for the County of Douglas, State of Oregon, by this indictment of the crime of

COUNT 1: RAPE IN THE FIRST DEGREE, ORS 163.375,
On or between February 23, 2004 and February 24, 2004

COUNT 2: SODOMY IN THE FIRST DEGREE, ORS 163.405,
On or between February 23, 2004 and February 24, 2004

COUNT 3: SODOMY IN THE FIRST DEGREE, ORS 163.405,
On or between February 23, 2004 and February 24, 2004

COUNT 4: ASSAULT IN THE SECOND DEGREE, ORS 163.175,
On or between February 23, 2004 and February 24, 2004

COUNT 5: ASSAULT IN THE SECOND DEGREE, ORS 163.175,
On or between February 23, 2004 and February 24, 2004

COUNT 6: FELONY ASSAULT IN THE FOURTH DEGREE,
On or between February 23, 2004 and February 24, 2004

COUNT 7: STRANGULATION, ORS 163.187,
On or between February 23, 2004 and February 24, 2004

COUNT 8: MENACING, ORS 163.190,
On or between February 23, 2004 and February 24, 2004

COUNT 9: INTERFERENCE WITH MAKING A REPORT, ORS 162.572,
On or between February 23, 2004 and February 24, 2004

COMMITTED AS FOLLOWS:

COUNT 1

The said JAMES ARTHUR ROSS, between the 23rd day of February, 2004 and 24th day of February, 2004, in said County of Douglas and State of Oregon, then and there being, did unlawfully and knowingly, by forcible compulsion, engage in sexual intercourse with Naomi Ross.

Page

-1- INDICTMENT

05-08-4630-M
EXHIBIT *Now*

1
2 The state further alleges that during the course of the
3 above-described offense, the defendant used or threatened to use a weapon.

4 The state further alleges that during the course of the
5 above-described offense, the defendant caused or threatened to cause
6 serious physical injury, contrary to the statutes in such cases made and
7 provided and against the peace and dignity of the State of Oregon;

8
9 COUNT 2

10 And the said defendant, on or between the 23rd day of February,
11 2004 and the 24th day of February, 2004, in Douglas County, Oregon, did
12 unlawfully and knowingly, by forcible compulsion, engage in deviate
13 sexual intercourse with Naomi Ross.

14 The state further alleges that during the course of the
15 above-described offense, the defendant used or threatened to use a weapon.

16 The state further alleges that during the course of the
17 above-described offense, the defendant caused or threatened to cause
18 serious physical injury, contrary to the statutes in such cases made and
19 provided and against the peace and dignity of the State of Oregon;

20
21
22 COUNT 3

23 And the said defendant, on or between the 23rd day of February,
24 2004 and the 24th day of February, 2004, in Douglas County, Oregon, did
25 unlawfully and knowingly, by forcible compulsion, engage in deviate sexual
26 intercourse with Naomi Ross.

1
2 The state further alleges that during the course of the
3 above-described offense, the defendant used or threatened to use a weapon.

4 The state further alleges that during the course of the
5 above-described offense, the defendant caused or threatened to cause
6 serious physical injury, contrary to the statutes in such cases made and
7 provided and against the peace and dignity of the State of Oregon;

8
9
10 COUNT 4

11 And the said defendant, on or between the 23rd day of February,
12 2004 and the 24th day of February, 2004, in Douglas County, Oregon, did
13 unlawfully and intentionally cause serious physical injury to Naomi Ross,
14 contrary to the statutes in such cases made and provided and against the
15 peace and dignity of the State of Oregon;

16
17 COUNT 5

18 And the said defendant, on or between the 23rd day of February,
19 2004 and the 24th day of February, 2004, in Douglas County, Oregon, did
20 unlawfully and knowingly cause physical injury to Naomi Ross by means
21 of a dangerous weapon, to-wit: a hand gun, contrary to the statutes in
22 such cases made and provided and against the peace and dignity of the
23 State of Oregon;

COUNT 6

And the said defendant, on or between the 23rd day of February, 2004 and the 24th day of February, 2004, in Douglas County, Oregon, did unlawfully and intentionally cause physical injury to Naomi Ross, and the assault was witnessed by Riley Ross, the minor child of Naomi Ross, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Oregon;

COUNT 7

And the said defendant, on or between the 23rd day of February, 2004 and the 24th day of February, 2004, in Douglas County, Oregon, did unlawfully and knowingly impede the normal breathing of Naomi Ross by blocking the mouth of Naomi Ross, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Oregon;

COUNT 8

And the said defendant, on or between the 23rd day of February, 2004 and the 24th day of February, 2004, in Douglas County, Oregon, did unlawfully and intentionally attempt to place Naomi Ross in fear of imminent serious physical injury by threatening to kill her with a weapon in his possession, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Oregon;

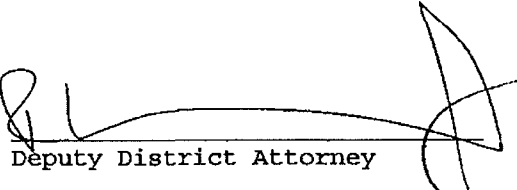
COUNT 9

And the said defendant, on or between the 23rd day of February, 2004 and the 24th day of February, 2004, in Douglas County, Oregon, did unlawfully, by interfering with a telephone, intentionally prevent another person from making a report to a 9-1-1 reporting system, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Oregon.

Dated at Roseburg, Douglas County, Oregon this 26th day of February, 2004.


Witnesses examined before the Grand Jury

JEFF AALBERG,
NAOMI ROSS (by aff)
ANGIE BORIGO,
JOE PERKINS
LESABETH TITUS


Deputy District Attorney

A TRUE BILL

Security Agreement Amount \$ _____


s/ Jarrod Palmer
Foreman of the Grand Jury

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR DOUGLAS COUNTY

THE STATE OF OREGON,

Plaintiff,

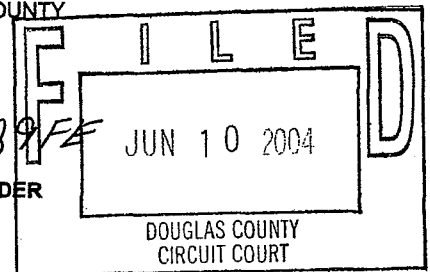
vs.

O4CRO429FE

Defendant.

CASE NO. O4CRO429FE

PLEA STATEMENT AND ORDER



1. I am the Defendant in this case. I wish to plead **GUILTY / NO CONTEST** to the crime (s) listed below. I am making this statement freely and voluntarily.
2. I am 25 years of age. My last year in school was grade GED. I CAN / CANNOT read, write and understand the English language. I have read this form or had it read to me. I HAVE / HAVE NOT had the assistance of a qualified interpreter. I understand everything in this form.
3. I understand that if I am not a citizen of the United States, conviction of a crime may result, under the laws of the United States, in deportation, exclusion from admission to the United States, or denial of naturalization.
4. I have told my lawyer everything I can remember about the facts of my case(s). My lawyer has advised me, and I understand, the nature of each charge, any lesser included charge, and any possible defense(s) to each charge. I am satisfied with the advice my lawyer has given me.
5. I understand that I have the right to plead not guilty to all charges. I have decided to plead **GUILTY/NO CONTEST**, and I understand that I give up the following rights:
 - (a) My right to trial by jury; and public trial by jury;
 - (b) My right to see and question witnesses called to testify against me at trial;
 - (c) My right to not incriminate myself;
 - (d) My right to require the State to prove my guilt beyond a reasonable doubt.
6. I am presently charged with the following crime(s) and have been advised of the maximum penalties and enhanced penalties:

<u>CRIME (S)</u>		<u>PENALTY</u>	
1. AH.	ag. murder		
2+3	Kidnap 1	20	375,000
4	Rape 1	20	375,000
5-6	Sodomy 1	20	375,000
7-8	At II	10	250,000
9	Fel. At IV	5	125,000

7. I am voluntarily and willingly pleading **GUILTY / NO CONTEST** to the following crime (s) and have been advised of the maximum penalties:

<u>CRIME (S)</u>		<u>PENALTY</u>	
10	strangulation	1	6,250
11	Menacing	1	6,250
12	intor forcing	1	6,250

DEFENDANT'S
EXHIBITRespondent's Exhibit
#103

USDC Case No. 10-1440-HO

08-4630-M

Event #:

EXHIBIT 15

8. In exchange for the plea (s) the District Attorney and I have made the following agreements:

No agreement ~~on~~ as to concurrent
or consecutive time

9. My plea is based only on what is written on this statement. No other promises have been made to me that are not included in this statement. I have not been threatened in any way. I understand that, if the District Attorney is making a recommendation to the court, the court does not have to accept it and may give me the maximum sentence.
10. I AM / AM NOT taking medication at this time. If I am taking medication, the medication does not affect my ability to think and to understand. I am not under the influence of any intoxicant, drug or alcohol.
11. If I am on probation or parole, I understand that this plea is a sufficient ground to cause the revocation of my probation or parole.
12. I understand that when I plead GUILTY, I admit each material element of the charge (s). If I plead NO CONTEST, I agree the State has sufficient evidence for the court to make a finding of conviction.
13. I understand that I have the right to request a pre-sentence report. I DO / DO NOT request a pre-sentence investigation report.
14. I have reviewed the criminal history summary prepared by the District Attorney.
15. I ask the court to accept my plea of GUILTY / NO CONTEST because I believe it is the best for me under the circumstances. My plea is freely and voluntarily made.

Defendant: [Signature]

Date 6-10-04

District Attorney: [Signature]

Date 6-10-04

Defense Counsel: [Signature]

Date 6-10-04

ORDER

The court finds the Defendant's plea of GUILTY / NO CONTEST to be knowingly, intelligently and voluntarily made. The court finds there is a factual basis for the plea and finds the Defendant guilty.

Judge: _____

Date _____

NOTICE AND ADVICE OF RIGHT TO APPEAL

In accordance with ORS 137.020, ORS Chapter 138 and the Rules of Appellate Procedure:

You may appeal to the Oregon Court of Appeals / Oregon Supreme Court from your conviction and sentence. An appeal must be in writing and must be filed within 30 days from the date you are sentenced. If you are unable to afford an attorney upon appeal, you may have one appointed for you. You are required to follow the procedures set forth in ORS Chapter 138 and the Rules of Appellate Procedure.

If you plead guilty or no contest, you may take an appeal from a judgment only when you make a colorable showing that disposition exceeds the maximum allowable by law or is unconstitutionally cruel and unusual. If your judgment includes any of the following dispositions, you may take an appeal from a judgment only when you make a colorable showing that disposition exceeds the maximum allowable by law, is unconstitutionally cruel and unusual or if you show a colorable claim of error in the proceeding:

- (a) Imposition of a sentence on conviction;
- (b) Suspension of imposition or execution of any part of a sentence;
- (c) Extension of a period of probation;
- (d) Imposition or modification of a condition of probation or of sentence suspension;
- (e) Imposition or execution of a sentence upon revocation of probation or sentence suspension;
- (f) Re-sentencing ordered by an appellate court or a post-conviction relief court.

RECEIVED
STATE COURT OF APPEALS
MAY 26 2005
SOUTH GOREN
COURT OF APPEALS
DEPUTY CLERK

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,) Douglas County Case NO. 04CR04291E
)
Plaintiff - Appellant,) CA Case No. 1128651
)
vs.) NOTICE OF APPEAL
)
) ORS 19.205 (2);
JAMES ARTHUR ROSS,)
)
Defendant - Appellant.)

- 1 -

Appellant gives notice of appeal from a judgment entered, on the 5th day of, May 2005,
by the Honorable Judge Joan G. Seitz in Douglas County Circuit Court, Case # 04CR04291E.

- 2 -

The parties to this appeal are:

James Arthur Ross
SID # 12599830
Snake River Correctional Inst.
777 Stanton Blvd.
Ontario, OR 97914

The State of Oregon
by Mary Williams O.S.B.#91124
Solicitor General for Oregon
400 Justice Building
1162 Court St. N.E.
Salem, OR 97310

- 3 -

Supplied herewith is:

A copy of the judgment being appealed with date of entry thereon:

- 4 -

This notice is timely filed within the 30 days permitted by law, in that the judgment was
filed on May 5th, 2005. This notice of appeal is otherwise in conformance with rule and statute.

Page 1 of 2 Notice of Appeal

Handwritten signature

Respondent's Exhibit
#104
USDC Case No. 10-1440-HO

- 5 -

The designation of record is:

Appellant designates the entire record below, including the trial court file, all exhibits,
and a transcribed record of all pre-hearing and hearing proceedings.

- 6 -

Appellant was not represented by counsel in the proceeding on appeal.

- 7 -

CERTIFICATE OF SERVICE

I certify that I served a true copy of the Notice of Appeal on the parties below, by placing
same in a sealed envelope, postage prepaid, addressed to each as below, and delivered to the U.S.
Mail via

SRCI staff, on this 19th day of May, 2005.

#1 Oregon State Court Administrator
Records Section
Supreme Court Building
1163 State Street NE
Salem, OR 97301-2563

#2 Mary Williams O.S.B.#91124
Solicitor General
400 Justice Building
1162 Court St. NE
Salem, OR 97310

#3 Transcript Coordinator for:
Douglas County Circuit Court
Douglas County Courthouse
1036 SE Douglas
Roseburg, OR 97470

#4 Douglas County Circuit Court
Douglas County Courthouse
1036 SE Douglas
Roseburg, OR 97470

James Arthur Ross

Pro se

S.I.D.#12599830

Snake River Correctional Institution
777 Stanton Boulevard
Ontario, Oregon 97914
(541) 881-4639

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR DOUGLAS COUNTY

STATE OF OREGON,

Plaintiff,

v.

JAMES ARTHUR ROSS,

Defendant.

Case No. 04CR0429FE

Order

Date of Ruling: May 5, 2005

Appearances: Richard Wesenberg, For the State by Written Response
James A. Ross, pro per by Written Motion

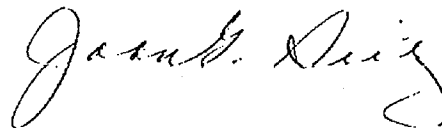
Nature of Proceeding: Defendant's Motion to Amend / Correct Judgment

Findings:

On August 31, 2004, Judge Walker sentenced Defendant based upon pleas of no contested entered on June 10, 2004. No appeal has been filed. On March 11, 2005, Defendant filed a motion to correct judgment and requested oral argument. Defendant's motion is based upon ORS 138.083 and cases cited within the motion. The court received the State's response objecting to Defendant's motion. Having reviewed the motion and the response, the court concludes it does not have jurisdiction to modify Defendant's sentence. Therefore, the court has not scheduled oral argument.

Order:

The court hereby denies Defendant's motion to amend or correct the sentencing judgment. The court denies Defendant's request for oral argument under the unique circumstances of this case.

Dated this 5th day of May, 2005.


JLD 5/27/05 9:48 AM
Status OpenCase Register..... Oregon Court of Appeals
Case#..... A128651 Oregon State Of/Ross James Arthur
Appeal Criminal

Case Filed Date..... 5/26/05 Starting Instrument... Appellate Notice Filing
Case Started Date... 5/26/05 Originating From..... lower court appeal
At Issue Date..... Previous Court..... Douglas Co Circuit Cou
Argued/Submit Date.. Previous Court Case#.. 04CR0429PE
Prev Court Debn Date
Master Case Number...
Relation to Master...
Decision.....
Debn/Dismiss Date...
Appl/Jdgmt/Close Date
Reinstated Date.....

ROLE PLAINTIFF
1 PTY/RSP Oregon State Of

ATTORNEY/BAR NUMBER
Williams Mary Hazel
91124

ROLE DEFENDANT
1 DEF/APP Ross James Arthur

ATTORNEY/BAR NUMBER
Ross James Arthur

ENTER DT	FILE DT	EVENT/FILING/PROCEEDING	SCHED DT	TIME	ROOM
1 5/27/05	5/26/05	Appellate Notice Filing			
		FILE NR;			
		SLF 2 Ross James Arthur			
2 5/27/05	5/26/05	Motion Appoint Counsel			
		SLF 2 Ross James Arthur			
***** END OF DATA *****					

1
2
3
4 IN THE COURT OF APPEALS OF THE STATE OF OREGON

5 STATE OF OREGON,

)Douglas County Circuit Court Case No.

) 04CR0429FE

)

6 Plaintiff- Respondent,

) CA A128651

)

) ****AMENDED****

7 v.

) MOTION FOR RELIEF FROM DEFAULT

) AND FOR EXTENSION OF TIME TO FILE

8 JAMES ARTHUR ROSS,

) PETITION FOR RECONSIDERATION

)

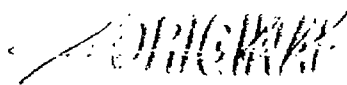
9 Defendant - Appellant.

) ORAP 7.25; ORCP 69 C and ORCP 71 B and C

10
11
12 COMES NOW the Appellant, *pro se*, and respectfully moves this Honorable Court for an
13 order granting relief from default and an extension of time to file Petition for reconsideration,
14 and extension of time.

15
16 Appellant asks for a one day extension of time and that the Court accept his Petition for
17 Reconsideration *nunc pro tunc* in the interests of justice and saving unnecessary time and
18 expenses. Should the Court find this objectionable, Appellant the respectfully requests a 35 day
19 extension of time in which to re-submit another Petition for Reconsideration. Appellant submits
20 the following "declaration" of facts as reason that he was unable to timely file the Petition for
21 reconsideration and the Court should issue forth it's order granting relief from default:

22
23 I, James Arthur Ross, do declare:



- 1 (1) That I am a resident of Oregon and I reside at: Snake River Correctional Institution 777
2 Stanton Blvd., Ontario, Oregon 97914-8335.
- 3 (2) That the court's order of dismissal was entered and mailed by the Court on June 16th,
4 2005.
- 5 (3) That due to a mail delivery problem the court's order of dismissal was not received by
6 Appellant until June 28th, 2005.
- 7 (4) That Appellant was unable to gain access to the Snake River Correctional Institution
8 legal library and file his Petition for Reconsideration within the 14 day time limit.
- 9 (5) That the soonest Appellant was able to gain access to the Snake river Correctional
10 Institution legal library and file his Petition for Reconsideration was on July 1st, 2005.
- 11 (6) That Appellant filed Petition for reconsideration on July 1st, 2005.
- 12 (7) That Appellant is incarcerated and is unable to contact opposing counsel Mary
13 Williams to determine whether or not counsel has any position concerning this motion.
- 14 (8) Appellant presents a color able claim of law for adjudication by this honorable court on
15 appeal in this case.
- 16 (9) That I have obtained these documents with the help of a Snake River Correctional
17 Institution Inmate Legal Assistant, and filed them as soon as possible.
- 18 (10) "I do hereby declare that the above statement is true to the best of my knowledge and
19 belief, and that I understand it is made for use as evidence in court and is subject to
20 penalty for perjury."
- 21

22 **Wherefore** Appellant respectfully prays this honorable Court grant this Motion for relief
23 from default and a one day extension of time and accept his Petition for Reconsideration as
24

1 previously filed one day late, or in the alternative grant a 35 day extension of time in which to re-
2 submit Petition for Reconsideration.

3
4 **CERTIFICATE OF SERVICE**

5 I certify that I served a true copy of the Notice of Appeal on the parties below, by placing
6 same in a sealed envelope, postage prepaid, addressed to each as below, and delivered to the U.S.
7 Mail via SRCI staff, on this 16th day of May, 2005.

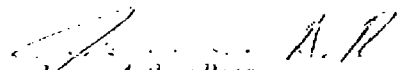
8 #1 Oregon State Court Administrator
9 Records Section
10 Supreme Court Building
11 1163 State Street NE
12 Salem, OR 97301-2563

#2 Mary Williams
Solicitor General
400 Justice Building
1162 Court St. N.E.
Salem, OR 97310

13 Pursuant to UTCR 2.010(7), I requested assistance from a legal assistant provided by
14 the Snake River Correctional Institution in Ontario, Oregon.

15 DATED this 8th day of July 2005.

16 Respectfully submitted,

17 
18 *James Arthur Ross*
19 *Pro Se*

20 Snake River Correctional Institution
21 SHD#12599830
22 777 Stanton Boulevard
23 Ontario, Oregon 97914
24 (541) 881-4639

PIRC

RECEIVED
STATE COURT ADMINISTRATION
JUL 17 2005

SUPREME COURT
COURT OF APPEALS
DEPUTY CLERK

FILED

IN THE COURT OF APPEALS FOR THE STATE OF OREGON

STATE OF OREGON,	)	CA A128651
Plaintiff-Respondent)	
V.	)	PETITION FOR
JAMES ARTHUR ROSS	)	RECONSIDERATION
Defendant-Appellant Pro se,)	
	)	ORAP 6.25

PETITION FOR RECONSIDERATION OF
DISMISSAL OF APPELLATE REVIEW

PETITION FOR RECONSIDERATION OF
THE ORDER OF DISMISSAL OF APPEAL

ENTERED ON JUNE 16TH 2005, BY THE HONORABLE
CHIEF JUDGE DAVID V. BREWER.

PARTIES ON APPEAL ARE:

MARY WILLIAMS OSB# 91124
SOLICITOR GENERAL
FOR THE STATE OF OREGON
1162 COURT STREET NE
SALEM, OREGON 97310
TELEPHONE (503) 378-4402

JAMES ARTHUR ROSS
S.I.D.# 12599830
PETITIONER PRO SE
777 STANTON BLVD.
ONTARIO, OREGON 97914
STAFF LIAISON MS. BISHOP
TELEPHONE (541) 881-4639

[Handwritten signature]

Respondent's Exhibit
#106
USDC Case No. 10-1440-HO

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,

)Douglas County Circuit Court Case No.

) 04CR0429FE

)

Plaintiff- Respondent,

) CA A128651

)

v.

) MOTION FOR RELIEF FROM DEFAULT

) AND FOR EXTENSION OF TIME TO FILE

JAMES ARTHUR ROSS,

) PETITION FOR RECONSIDERATION

)

Defendant- Appellant.

) ORAP 7.25; ORCP 69 C and ORCP 71 B and C

COMES NOW the Appellant, *pro se*, and respectfully moves this Honorable Court for an order granting relief from default and an extension of time to file Petition for reconsideration, and extension of time.

Appellant asks for a one day extension of time and that the Court accept his Petition for Reconsideration *nunc pro tunc* in the interests of justice and saving unnecessary time and expenses. Should the Court find this objectionable, Appellant the respectfully requests a 35 day extension of time in which to re-submit another Petition for Reconsideration. Appellant submits the following "declaration" of facts as reason that he was unable to timely file the Petition for reconsideration and the Court should issue forth it's order granting relief from default:

I, James Arthur Ross, do declare:

ORIGINAL

1 (1) That I am a resident of Oregon and I reside at: Snake River Correctional Institution 777

2 Stanton Blvd., Ontario, Oregon 97914-8335.

3 (2) That the court's order of dismissal was entered and mailed by the Court on June 16th,

4 2005.

5 (3) That due to a mail delivery problem the court's order of dismissal was not received by

6 Appellant until June 28th, 2005.

7 (4) That Appellant was unable to gain access to the Snake River Correctional Institution

8 legal library and file his Petition for Reconsideration within the 14 day time limit.

9 (5) That the soonest Appellant was able to gain access to the Snake river Correctional

10 Institution legal library and file his Petition for Reconsideration was on July 1st, 2005.

11 (6) That Appellant filed Petition for reconsideration on July 1st, 2005.

12 (7) That Appellant is incarcerated and is unable to contact opposing counsel Mary

13 Williams to determine whether or not counsel has any position concerning this motion.

14 (8) Appellant presents a color able claim of law for adjudication by this honorable court on

15 appeal in this case.

16 (9) That I have obtained these documents with the help of a Snake River Correctional

17 Institution Inmate Legal Assistant, and filed then as soon as possible.

18 (10) "I do hereby declare that the above statement is true to the best of my knowledge and

19 belief, and that I understand it is made for use as evidence in court and is subject to

20 penalty for perjury."

21

22 **Wherefore** Appellant respectfully prays this honorable Court grant this Motion for relief

23 from default and a one day extension of time and accept his Petition for Reconsideration as

24

1 previously filed one day late, or in the alternative grant a 35 day extension of time in which to re-
2 submit Petition for Reconsideration.

3
4 **CERTIFICATE OF SERVICE**

5 I certify that I served a true copy of the Notice of Appeal on the parties below, by placing
6 same in a sealed envelope, postage prepaid, addressed to each as below, and delivered to the U.S.
7 Mail via SRCJ staff, on this 16th day of May, 2005.

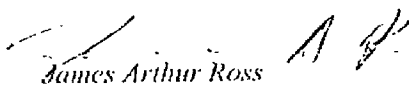
8 #1 Oregon State Court Administrator
9 Records Section
10 Supreme Court Building
11 1163 State Street NE
12 Salem, OR 97301-2563

#2 Mary Williams
Solicitor General
400 Justice Building
1162 Court St. N.E.
Salem, OR 97310

13 Pursuant to UTCR 2.010(7), I requested assistance from a legal assistant provided by
14 the Snake River Correctional Institution in Ontario, Oregon.

15 DATED this 1st day of July 2005.

16 Respectfully submitted,

17 
18 *James Arthur Ross*
19 *Pro Se*
20 Snake River Correctional Institution
21 SID#12599830
22 777 Stanton Boulevard
23 Ontario, Oregon 97914
24 (541) 881-4639

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14 JUN 1995
STATE OF OREGON
JUN 14 2005
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COUNCIL COUNTY
BUDGET 1995
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1/8/05

CA A128651
(AMENDED) PETITION FOR
RECONSIDERATION
ORAP 6.25

JAMES ARTHUR ROSS
S.I.D.# 12599830
PETITIONER PRO SE
777 STANTON BLVD.
ONTARIO, OREGON 97914
STAFF LIAISON MS. BISHOP
TELEPHONE (541) 881-4639

Respondent's Exhibit
#107
USDC Case No. 10-1440-HO

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ORAP 6.25

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Amelia

1 (7) Defendant now files petition for reconsideration by the Oregon Court of Appeals.

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PETITION FOR RECONSIDERATION

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1.

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No briefs have been submitted or argued in this case, therefore these issues have not been addressed by the court of appeals.

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8

A copy of the order for which petition for reconsideration is prayed for is attached hereto.

9

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Defendant claims the the Court of Appeals erred in construing and applying the law for the following reasons:

12

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(a) The application of the questions of law settled in **State v. Hart, 188 Or App 650, 72 P3d 671, rev den 336 Or 126 (2003)**, does not properly apply to petitioner's case for the following reasons:

16

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1. Hart addressed an appeal-asserting jurisdiction under **ORS 138.053** and former **ORS 19.205(4)(2001)(now codified as ORS 19.205(5))**. Hart was litigated and decided before the 2003 Legislature created **ORS 19.205(2) or (3)**. Either or both those statutes confer jurisdiction over a defendant's appeal from a trial court denial of his motion to correct a sentencing error if it affects a substantial right, so Hart cannot and does not decide whether a defendant may appeal under those statutes. **Strahan v. Fred Meyer, Inc., 331 Or 35, 54, 11 P3d 228 (2000)**. Consequently, current **ORS 19.205 (2) or (3)** does confer jurisdiction over a moving party's appeal of an adverse filing on an error correction motion. Defendant must appeal the order, or the Defendant will not have an

1 adequate remedy at law because mandamus relief is not available. **State V. Villers Coos**
2 **County Circuit Court Case No. 95CR0911, Oregon Supreme Court Case No. SC**
3 **SS2120, Mandamus denied, February 23rd 2005, by Chief Justice Wallace P.**
4 **Carson Jr.**

5 II. Defendants sentence is invalid because the sentencing court did not have authority or
6 jurisdiction to sentence Defendant to a sentence enhancement without first having a jury
7 make the necessary findings of aggravation. Thus the sentence is invalid, void and a
8 nullity. Execution divests a court of jurisdiction only if the judgment of conviction and
9 sentence is **valid**. If it contains errors rendering it **invalid**, then notwithstanding the
10 judgment's execution the court retains jurisdiction to correct the error, **State v. Horsley,**
11 **168 Or App 559, 561-562, 7 P3d 646 (2000).**

12 *"A trial court has the inherent authority to correct errors*
13 *in a judgment of conviction and sentence sua sponte, or on*
14 *motion of a party, Horsley, 168 Or APP AT 561. This*
15 *authority is premised on the fundamental rule that "the*
16 *court in imposing punishment for a criminal offense is*
17 *limited strictly to the provisions of the applicable statute,*
18 *and any deviation from the statute in the mode, extent or*
19 *place of punishment renders the judgment void." State v.*
20 *Cotton, 240 Or 252, 254, 400 P2d 1022 (1965). See also*
21 *State ex rel. Huddleston v. Sawyer, 324 Or 597, 615, 932*
22 *P2d 1145, cert den 522 US 994 (1997). Even the*
23 *defendant's "assent" to an unauthorized judgment of*
24 *conviction and sentence does not "confer authority" to*
enter it. State v. Duncan, 15 Or App 101, 105, 514 P2d
1367 (1973)(Tanner, J.). See also State v. Popp, 118 Or
App 508, 511, 848 P2d 134 (1992); State v. Taylor, 116 Or
App 647, 652-653, 842 P2d 460 (1992), on recons 119 Or
App 209, 850 P2d 1118, rev den 317 Or 584 (1993); State
y. Marsh, 78 Or App 290, 294, 716 P2d 261, rev den 301
Or 320 (1986)."

23 The court's error correction authority is confirmed by **ORS 138.083(1)**. In pertinent part, that
24 statute provides:

1 *"The sentencing court shall retain authority irrespective*
2 *of any notice of appeal after entry of judgment of*
3 *conviction to modify its judgment and sentence to correct*
4 *any arithmetic or clerical errors or to delete or modify*
5 *any erroneous term in the judgment. The court may*
6 *correct the judgment either on the motion of one of the*
7 *parties or on the court's own motion after written notice*
8 *to all the parties." Id.*

9 Moreover, the Supreme Court has explained that when a court becomes aware of errors in
10 a judgment of conviction and sentence, it not only has the authority to correct them, but it has
11 the duty to exercise that authority:

12 *"When a court acts beyond the bounds of its sentencing*
13 *authority, it infringes upon the power of the legislature to*
14 *determine the manner of punishment. A sentence must*
15 *be in conformity with the governing statute; any non-*
16 *conforming sentence is void for lack of authority and thus*
17 *totally without legal effect. When the trial court discover*
18 *[s] its error it [has] the duty to take corrective action and*
19 *to impose a valid sentence."*

20 State v. Leathers, 271 Or 236, 240, 531 P2d 901 (1975)(emphasis added). See also Cotton,
21 240 Or at 254 (same); State v. Froembling, 237 Or 616, 619, 391 P2d 390 (1964)(where trial
22 judge imposed "the wrong sentence for the crime charged***the trial judge must change the
23 sentence to correct the error and he must exercise his discretion anew in arriving at what he
24 considers an appropriate sentence").


25 If the motion seeks to correct a substantive, as opposed to an administrative error, the
26 defendant must be present, or have waived right to presence at a hearing on the motion. State v.
27 Gibson, 183 Or App 25, 31-32, 51 P3d 619 (2002). Defendant requested oral arguments and
28 official court reporting services in accordance with UTCR 4.050(1)(2) defendant was not
29 allowed to present oral arguments and was denied the official court reporting services that he
30 requested.

1 **CONCLUSION**

2 Defendant has demonstrated a color able claim of law and that this court has incorrectly
 3 applied the law interpreted in State v. Hart, 188 Or App 650, 72 P3d 671, rev den 336 Or 126
 4 (2003), to Defendant's case, State v. Hart does not raise the same issues and does not preclude
 5 appeal of the motion defendant seeks appeal of, because appeal is available through ORS 19.205
 6 (3) as the denial of the motion appealed from affects a substantial right.

7 **WHEREFORE**, Defendant prays this honorable court issue forth it's order allowing
 8 Petitioner to go forward on appeal in this action.

9
 10 Respectfully submitted this 8th day of July 2005.

11
 12 
 13 James Arthur Ross SHD# 12599830
 14 Petitioner Pro se'
 15 Snake River Correctional Institution
 777 Stanton Blvd.
 Ontario, Oregon 97914-8335

16 **CERTIFICATE OF SERVICE**

17 STATE OF OREGON,)
 Plaintiff-Respondent') CA A128651
 18 V.)
 JAMES ARTHUR ROSS) **Petition for Reconsideration**
 Defendant-Appellant Pro se',) **ORAP 6.25**

19
 20 **COMES NOW**, James Arthur Ross and hereby certifies that:

21 I am incarcerated by the Oregon Department of Corrections at the Snake River
 22 Correctional Institution located at 777 Stanton Blvd., Ontario Oregon 97914-8335;

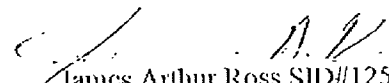
23 That on this 8th day of July 2005, I personally placed in the Snake
 24 River Correctional Institution's mail service **A TRUE COPY** of:

**AMENDED Petition for Reconsideration
ORAP 6.25**

That I placed the aforementioned in a securely enclosed postage paid envelope, addressed
to the parties listed below;

**Mary Williams OSB# 91124
Solicitor General
for the State of Oregon
1162 Court street NE
Salem, Oregon 97310**

**State Court Administrator
Attention: Records Section
1163 State Street
Salem, Oregon 97301-2563**


**James Arthur Ross SID#12599830
Petitioner, Pro se
777 Stanton Blvd.
Ontario, Oregon 97914-8335
Staff liaison: Ms. J. Bishop
(541) 881-4639**

CRK
SH - 19

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,)	
	)	Douglas County Circuit
Plaintiff-Respondent,	)	Court No. 04CR042973
)	
v.	)	CA A128653
)	
JAMES ARTHUR ROSS,	)	ORDER DENYING RECONSIDERATION
)	
Defendant-Appellant.)	

Appellant appealed from an order denying his motion to correct the sentence imposed by the judgment of conviction and sentence. The court dismissed the appeal on the ground that, in *State v. Hart*, 188 Or App 650, 72 P3d 671 (2003), the court held that the legislature has not provided for the right to appeal post-judgment orders denying relief in criminal cases. Appellant has petitioned for reconsideration.

Appellant contends, first, that legislative amendments to ORS 19.205(2) and (3) since *Hart* was decided require a different result. Appellant is incorrect, because ORS 19.205 as amended still applies only to civil cases, not criminal cases.

Appellant further contends that because he challenges the sentencing court's jurisdiction to sentence him, he raises issues different than those raised in *Hart*. The issue raised in the trial court and the trial court's reason for failing to correct a sentence does not make the case distinguishable from *Hart* nor render the order appealable.

The petition for reconsideration is denied.

David V. Brewer
David V. Brewer, Chief Judge

AUG 25 2005
Date

cc: James Arthur Ross
Mary H. Williams

REPLIES SHOULD BE DIRECTED TO THE STATE COURT ADMINISTRATOR, RECORDS SECTION, SUPREME COURT BUILDING, 1163 STATE STREET, SALEM, OR 97301-2563

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Respondent's Exhibit
#108
USDC Case No. 10-1440-HO

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FILED
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SUPERIOR COURT
CLATSOP COUNTY

IN THE SUPREME COURT OF THE STATE OF OREGON

STATE OF OREGON,)
Respondent on Review,) Circuit Court Case Numbers:
) 04CR0429FE
vs.) Appellate Numbers:
) CA A128651
JAMES ARTHUR ROSS,)
Petitioner on Review.) Supreme Court No.

ORAP
1-35(4)

PETITION FOR REVIEW OF DEFENDANT - APPELLANT

Appeal from the decision of the Court of Appeals on
an appeal from a judgment of the Circuit Court for
DOUGLAS COUNTY
Honorable Joan G. Seitz, Judge

Dismissed: before David V. Brewer, Chief
Judge, of the Oregon Court of Appeals

James Arthur Ross,
Pro se Petitioner on Review
SID# 12599830
Snake River Correctional Institution
777 Stanton Boulevard
Ontario, Oregon 97914-8335
Phone: (541) 881-4639

HARDY MYERS #64077
Oregon Attorney General
MARY H. WILLIAMS #91124
Solicitor General
400 Justice Building
1162 Court Street NE
Salem, Oregon 97310
Phone: (503) 378-4402

September 2005

Note: Pursuant to ORAP 9.05(2)(d), Petitioner hereby gives notice of his intent to file a
brief on the merits if review is allowed.

ORIGINAL

Respondent's Exhibit
#109
USDC Case No. 10-1440-HO

SUBJECT INDEX

PAGE

PETITION FOR REVIEW

Prayer for Review.....	1
Questions Presented.....	1
Purposed Rule of Law.....	1
Reasons for Reversal.....	1-2
Statement of the Facts.....	2
Discussion.....	2-6
Reasons Issues Presented Have Importance Beyond The Particular Case And Require	
Decision By The Supreme Court.....	6
Opinion Of The Court Of Appeals.....	6-7
CONCLUSION.....	7

EXCERPT OF RECORD INDEX

Order Of The Douglas County Circuit Court.....	1R-1
Opinion Of The Oregon Court Of Appeals.....	1R-2

EXHIBITS

Opinion Of The Oregon Court Of Appeals (State v. Briggs).....	Exhibit-1
---	-----------

TABLE OF AUTHORITIES

Cases Cited

<i>Myers v. Warner</i> , 3 Or. 212 (1870).....	5
<i>State v. Briggs</i> , Coos County Circuit Court Case Number 02CR1147;	

ii

<i>Court of Appeals Case No. CA A128908</i>	5
<i>State v. Brown, 5 Or. 119 (1873)</i>	5
<i>State v. Graham, 143 Or. App. 85, 923 P.2d 664 (1996)</i>	5
<i>State v. Hamilton, 158 Or. App. 258, 974 P.2d 245 (1999)</i>	5
<i>State v. Hart 188 Or. App. 650, 72 P.3d 671 (2003)</i>	2, 4 and 7
<i>State v. Ross, Douglas County Circuit Court Case 04CR04291F1;</i> <i>Court of Appeals Case No. CA A128651</i>	1
<i>State v. Thomas, 117 Or. App. 553, 844 P.2d 936 (1992)</i>	5
<i>State v. Whitloch, 187 Or. App. 265, 65 P.3d 1114 (2003)</i>	6
<i>U.S. v. DeWald, 669 F.2d 590 (C.A. 9 Cal. 1982)</i>	5

STATUTORY PROVISIONS

ORS 19.005.....	3
ORS 19.205.....	1, 3, 4 and 5
ORS 19.250.....	2
ORS 19.260.....	2
ORS 19.270.....	2 and 5
ORS 19.385.....	2
ORS 19.390.....	2
ORS 19.420.....	2
ORS 19.425.....	2
ORS 19.435.....	2
ORS 19.450.....	2
ORS 19.510.....	2
ORS 137.020.....	4

iii

ORS 138.005.....	2
ORS 138.053.....	3 and 4
ORS 138.083.....	2, 3, 4, 5, and 6
ORS.138.185.....	2
ORS 138.222.....	3, 4, and 5
ORS 138.010 to 138.310.....	3
ORS 174.020.....	3
ORS 174.030.....	3
ORS 137.020.....	4

I. PRAYER FOR REVIEW

Petitioner, Defendant - Appellant below and Petitioner hereafter, respectfully prays that this court review and reverse the Court of Appeals' decision in his case, *State v. Ross*, Douglas County Circuit Court Case 04CR04291JJ, CA A128651. Appellant was convicted in the Circuit Court, Douglas County; Stephen Walker, Judge. Appellant filed a motion to correct/amend sentence on March 11, 2005 in Douglas County Circuit Court pursuant to ORS 138.083. The circuit court denied the motion May 5, 2005. See ER-1, and Appellant filed notice of appeal on May 19, 2005. The Court of appeals entered order of dismissal, Appellant filed a Petition for Reconsideration in the Oregon Court of Appeals, The Oregon Court of Appeals denied the Petition for Reconsideration on August 25, 2005. A copy of the Court of Appeals' decision is attached as ER-2.

II. QUESTIONS PRESENTED

1. Whether ORS 19.205 applies equally to both Civil and Criminal Appeals.

PURPOSED RULE OF LAW

(a) Where Petitioner pro-se is not represented by counsel it is manifestly unfair not to construe his pleadings liberally and accept/allow Supreme Court Review of the Petitioner's pro-se case when the court has legal jurisdiction to do so and Petitioner's case presents several substantial questions of law that are apparent upon the face of the record.

IV. REASONS FOR REVERSAL

The Court of Appeals is applying a rule of law inconsistently. In that it is applying the Procedures In Civil Procedures under Chapter 19. Appeals, Commencement of Appeals (Jurisdiction), to both grant and deny appeal review in criminal case. The courts decision is

sending mixed signals. Petitioner's case presents several substantial questions of law and the court of appeals' ruling is not consistent with its previous rulings.

V. STATEMENT OF FACTS

Petitioner filed a Motion To Amend/Correct Sentence in Douglas County Circuit Court on March 11, 2005 pursuant to ORS 138.083(1). The circuit court denied the motion May 5, 2005. See ER-1.

Petitioner then filed a Notice of Appeal on May 19, 2005. The Court of Appeals issued a Case Number CA A128651 and later Dismissed based on *State v. Hart* 188 Or. App. 650, 72 P.3d 671 (2003). Opening Brief was not submitted. Appellant filed a Petition for Reconsideration in the Oregon Court of Appeals. The Oregon Court of Appeals denied the Petition for Reconsideration on August 25, 2005. A copy of the Court of Appeals' decision is attached as ER-2.

VII. DISCUSSION

Petitioner challenges the inconsistent application of Procedures In Civil Proceedings under Chapter 19, Appeals, Commencement of Appeals (Jurisdiction), with Procedures In Criminal Matters Generally under Chapter 138, Oregon Revised Statutes.

The Petitioner proffers a series of applicable authorities for the purpose of this discussion:

Under ORS 138.185 Procedures In Criminal Matters Generally: Chapter 138, Appeals; Post-Conviction Relief Appeals ; (2)The Provisions of ORS 19.250; 19.260; 19.270; 19.385; 19.390; 19.435; 19.450 and 19.510 and the provisions in ORS 19.425 authorizing review of intermediate orders and if the Defendant is the appellate, the provisions of ORS 19.420(3) shall apply to appeals to the Court of Appeals.

All the ORS's mentioned under ORS.138.185 are Procedures in Civil Proceedings. Also under ORS 138.005 Procedures in Criminal Matters Generally; Chapter 138, Appeals Post-

Conviction Relief Appeals: Definitions- "As used in ORS 138.010 to 138.310, unless the context requires otherwise, the terms defined in ORS 19.005 have the meanings set forth in ORS 19.005. Under ORS 19.005 (2) Procedures In Civil Proceedings "Judgment means a judgment or appealable order, as provided in ORS 19.205 .

Under ORS 138.222 (4)(a), Procedures in Criminal Matters Generally ; Chapter 138. Appeals. In any appeal, the appellate court may review a claim that; "The sentencing Court failed to comply with requirement of law in imposing or failing to impose a sentence". (5). If the Appellate Court determines that the sentencing court, in imposing a sentence in the case, committed an error that requires re-sentencing, the appellate court shall remand the entire case for re-sentencing. (7)(c),"A sentence was entered subsequent to a re-sentencing order by an appellant court or a post-conviction relief court.

Under ORS 138.053(1) only post judgment orders that impose a sentence may be appealed

Under ORS 138.083(1), Retention of Authority by Trial Court for Certain Purposes. The sentencing court shall retain authority irrespective of any notice of appeal after entry of judgment of conviction to modify its judgment and sentence to correct any arithmetic or clerical errors or to delete or modify any erroneous term in the judgment.

Under ORS 174.020 Legislative intent, general and particular provisions and intents "In the construction of a Statute the intention of the legislature is to be pursued if possible; and when a general and particular provision are inconsistent, the latter is paramount to the former". So a particular intent shall control a general one that is inconsistent with it.

Under ORS 174.030, Construction Favoring Natural Right to Prevail. "Where a Statute is equally susceptible of two interpretation, one in favor of natural right and the other against it, the former is to prevail".

Under ORS 19.205 Appeal Of Judgments (3) An Order that is made in the action after a general judgment is entered and that affects a substantial right, including an Order granting a new trial, may be appealed in the same manner as provided in this chapter for judgments.

Under ORS 137.020 Judgment; Notice of Right To Appeal. By giving a Notice of Appeal, Petitioner exercised his right prescribed by statute the Oregon Constitution, Article 1, Section 20 and the 14th Amendment of the United States Constitution.

APPEALABLE ORDER

If the courts reasoning is correct in their ruling in *State v. Hart*, 188 Or.App.650,72 P.3d 671 (2003) that: "Both Motions arise after judgment and seek to correct a perceived error in the earlier criminal judgment. Neither is a new or separate proceeding. Rather, each is a part of the original criminal action, and like a Motion for new trial, asks the court to correct an error in the criminal action". And more specifically, if ORS 138.053(1) "A judgment, or Order of a court, if the Order is imposed after judgment, is subject to the appeal provision and limitations on review under ORS 138.040 and 138.050 if the disposition includes any of the following: "A imposition of a sentence on conviction" which applies to Petitioner, then this same line of reasoning should be followed in that Petitioner is seeking review of an intermediate order, which pertains to imposition of a sentence that exceeds the maximum allowable by law and is therefore constitutionally cruel and unusual ORS138.053(1); ORS 138.222 (4)(a);(5);(7)(c) and ORS 138.083(1) should apply to Petitioner in this case thereby making all Denial and Dismissal Orders appeal able.

If the proceedings that took place in Douglas County Circuit Court on May 5, 2005 was not part of the original criminal action, then it must be said that a "Special -Statutory -Proceeding" took place and the provisions set forth in ORS 19.205 must apply to Petitioner for purposes of Appeal.

In *State v. Thomas*, 844 P.2d 936 (1992); this court held that "Sentence imposed under Trial Courts mistaken belief about its authority to impose sentence is reviewable, even if sentence is within presumptive range". ORS 138.222 (2)(a),(4)(a). In *State v. Hamilton*, 974 P.2d. 245 (1999); "Once a defendant appeals, the sentencing court loses jurisdiction except for purposes of correcting clerical errors and to modify and erroneous term in the Judgment. ORS 138.083.

In *Myers v. Warner* 3 Or. 212 (1870). (Where jurisdiction of the court is acquired by means specially pointed out in statute, and not by the ordinary process of the court, the means so prescribed must be strictly pursued, or the proceeding is void).

In *State v. Brown*, 5 Or.119 (1873), (An Order to be appealable must be one not only affecting a substantial right, but one which, in effect, determines the action.

U.S. v. DeWald, 669 F.2d 590 (C.A. 9 Cal. 1982), (Only if sentencing court abused its discretion will appellate court overturn denial of Motion To Reduce Sentence)

If the Court of Appeals takes the position that ORS 19.270(4) applies in *State v. Briggs*, Coos County Circuit Court Case Number 02CR1147; Court of Appeals Case No. CA A128908 , see EXHIBIT-1 to give leave to the Trial Court to Amend or Correct Judgment, and said ORS is a Procedure In Civil Proceedings, then it is assumed correct that the provisions of ORS 19.205 applies to Petitioner's case for purpose of Appeal as ORS 19.205 is also a Procedure In Civil Proceedings. *State v. Briggs* is a criminal case with civil procedures being applied and adhered to.

JURISDICTION

Petitioner also challenges the Douglas County Circuit Courts jurisdiction to impose ORS 137.123 to sentence Petitioner to consecutive sentences and an upward departure sentences on June 10, 2004. Under current ORS 138.083, there is no time limit to Motion the Circuit Court to Amend/Correct Sentence to delete or modify erroneous term in Judgment. See *State*

y.Graham,143 Or.App. 85 (1996) (In 1995, the Legislature amended ORS 138.083 to expand Trial Courts authority to correct erroneous terms in judgments of conviction. The effective date of that amendment was September 9th,1995, Or. Laws 1995, Ch. 109 §1.).

Under current Case Law under State v. Whitloch, 187 Or.App. 265,65 P.3d 1114 (2003) (A sentence that does not conform to law is invalid; when a trial court imposes such a sentence it is a legal nullity, and the trial court subsequently has authority to impose a lawful sentence, even if defendant is already in the custody of the Department of Corrections).Petitioner contends that the sentencing court did not retain jurisdiction/authority to impose ORS 137.123 on August 31, 2004 then, but now retains indefinite authority to correct not only "arithmetic or clerical errors" but also "any erroneous terms in the judgment".

VII. REASONS WHY THE ISSUES PRESENTED HAVE IMPORTANCE BEYOND THE PARTICULAR CASE AND REQUIRE DECISION BY THE SUPREME COURT

There are several thousand cases that are effected by the Appeal process in criminal matters that are subjected to the Rules of Court as well as the ORS's that encompass the jurisdiction of the Appellate Court. The previous decisions of the Court of Appeals sends a confusing message as to Chapter 19, of the Oregon Revised Statutes., and how it applies. This Court must clarify what application Chapter 19 have in Appeals that have their nascent in criminal proceedings. This matter effects thousands of cases and a clarification would bring consistency to the Appeals process and eliminate confusion.

VIII. OPINION OF THE COURT OF APPEALS

Appellant appealed from an Order denying his motion to correct/the sentence imposed by the judgment of conviction and sentence. The court dismissed the appeal on the ground that, in

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR DOUGLAS COUNTY

STATE OF OREGON,

Plaintiff,

v.

JAMES ARTHUR ROSS,

Defendant.

Case No. 04CR04291E

Order

Date of Ruling: May 5, 2005

Appearances: Richard Wesenberg, For the State by Written Response
James A. Ross, pro per by Written Motion

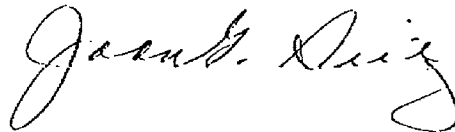
Nature of Proceeding: Defendant's Motion to Amend / Correct Judgment

Findings:

On August 31, 2004, Judge Walker sentenced Defendant based upon pleas of no contested entered on June 10, 2004. No appeal has been filed. On March 11, 2005, Defendant filed a motion to correct judgment and requested oral argument. Defendant's motion is based upon ORS 138.083 and cases cited within the motion. The court received the State's response objecting to Defendant's motion. Having reviewed the motion and the response, the court concludes it does not have jurisdiction to modify Defendant's sentence. Therefore, the court has not scheduled oral argument.

Order:

The court hereby denies Defendant's motion to amend or correct the sentencing judgment. The court denies Defendant's request for oral argument under the unique circumstances of this case.

Dated this 5th day of May, 2005.


E.R. - 1

Page 1 of 1

IN THE COURT OF APPEALS OF THE STATE OF OREGON

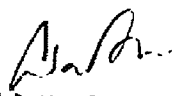
STATE OF OREGON,)	
	)	Douglas County Circuit
Plaintiff-Respondent,	)	Court No. 04CR0429TR
)	
v.	)	CA A128651
)	
JAMES ARTHUR ROSS,	)	ORDER DENYING RECONSIDERATION
)	
Defendant-Appellant.)	

Appellant appealed from an order denying his motion to correct the sentence imposed by the judgment of conviction and sentence. The court dismissed the appeal on the ground that, in *State v. Hart*, 188 Or App 650, 72 P3d 671 (2003), the court held that the legislature has not provided for the right to appeal post-judgment orders denying relief in criminal cases. Appellant has petitioned for reconsideration.

Appellant contends, first, that legislative amendments to ORS 19.205(2) and (3) since *Hart* was decided require a different result. Appellant is incorrect, because ORS 19.205 as amended still applies only to civil cases, not criminal cases.

Appellant further contends that because he challenges the sentencing court's jurisdiction to sentence him, he raises issues different than those raised in *Hart*. The issue raised in the trial court and the trial court's reason for failing to correct a sentence does not make the case distinguishable from *Hart* nor render the order appealable.

The petition for reconsideration is denied.


David V. Brewer, Chief Judge

AUG 25 2005
Date

c: James Arthur Ross
Mary H. Williams

REPLIES SHOULD BE DIRECTED TO THE STATE COURT ADMINISTRATOR, RECORDS SECTION, SUPREME COURT BUILDING, 1163 STATE STREET, SALKM, OR 97301-2563

080905ca.wpd,p10

ER-2

Page 1 of 1

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,

Plaintiff-Respondent,

v.

JAMES BRIGGS,

Defendant-Appellant.

Coos County Circuit
Court No. 02CR1147

CA A128908

ORDER GIVING LEAVE
UNDER ORS 19.270(4)

COPY

On June 1, 2005, appellant filed a notice of appeal from a judgment entered on May 20, 2005, in trial court number 02CR1147, according to paragraph one of the notice of appeal. Appellant attached a "record of proceedings and order" from trial court number 02CR1129, and an "amended judgment" from trial court number 02CR1147. However, review of the case register shows that the amended judgment was entered in trial court number 02CR1129, and not in the trial court number 02CR1147, as listed on the amended judgment. Furthermore, the case register in trial court number 02CR1147 shows that the case was closed on July 25, 2002. It appears that the trial court number listed on the amended judgment is incorrect.

Because it appears that the trial court intended to enter the amended, the court gives the trial court leave, on the motion of any party, to correct the trial court number on the amended judgment, vacate the amended judgment entered on May 20, 2005, in trial court number 02CR1129, and re-enter the amended judgment in 02CR1147. ORS 19.270(4). If the trial court re-enters the amended judgment, appellant must file an amended notice of appeal in order for the appeal to proceed. This appeal will be held in abeyance pending the filing of the amended notice of appeal. However, the court will dismiss this appeal, without further notice to the parties, for lack of prosecution, if the amended notice of appeal is not filed within the time allowed under ORS 138.071.

David V. Brewer
CHIEF JUDGE

JUL 15 2005

DATE

cc: James Briggs
Mary H. Williams
Honorable Michael J. Gillespie
Coos County Transcript Coordinator
Coos County Trial Court Administrator

REPLIES SHOULD BE DIRECTED TO THE STATE COURT ADMINISTRATOR, RECORDS
SECTION, SUPREME COURT BUILDING, 1163 STATE STREET, SALEM, OR 97301-2563

gar062605/gv1cr117

Exhibit
1
Page 1 of 1

State v. Hart 188 OR. App. 650, 72 P.3d 671 (2003), the court held that the legislature has not provided for the right to appeal post-judgment orders denying relief in criminal cases. Appellant has Petitioned Reconsideration.

Appellant contends, first, that legislative amendments to ORS 19.205 (2) and (3) since Hart was decided require a different result. Appellant is incorrect, because ORS 19.205 as amended still applies only to civil cases, not criminal cases.

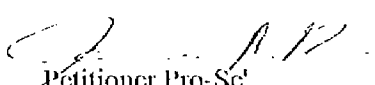
Appellant further contends that because he challenges the sentencing court's jurisdiction jurisdiction to sentence him, he raises different then those raised in Hart. The issue raised in trial court and the trial court's reason for failing to correct a sentence does not make the case distinguishable from Hart nor render the order appealable.

The Petitioner for reconsideration is denied.

CONCLUSION

Based upon the foregoing reasons stated herein, Petitioner hereby prays that this court accept review and reverse the decision of the Court of Appeals which denied Petition for Reconsideration, and Appellate Review.

Respectfully submitted this 2nd day of September, 2005.

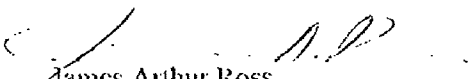

Petitioner Pro-Se
James Arthur Ross
SID#12599830
Snake River Correctional Inst.
777 Stanton Blvd.
Ontario, Oregon. 97914-8335.
Staff liaison: Ms. J. Bishop
(541) 881-4639

CERTIFICATE OF TRUE COPY

I, James Arthur Ross, do hereby certify that the document(s) listed below is (are) a true and identical copy of the original filed with the Court:

Pro se Petition for Supreme Court Review.

DATED this 21 day of September 2005.


James Arthur Ross,
Appellant pro se
S.I.D#12599830
Snake River Correctional Institution
777 Stanton Blvd.
Ontario, Oregon 97914
541-881-4639

CERTIFICATE OF SERVICE

CASE NAME: State v. Ross Douglas County Circuit Court Case No. 04CR04291E; Court fo
Appeals Case No. CA A 128651; Supreme Court Case No. (Pending)

COMES NOW, James Arthur Ross, and certifies the following:

That I am incarcerated by the Oregon Department of Corrections at Snake River Correctional Institution, 777 Stanton Blvd., Ontario, Oregon 97914-8335.

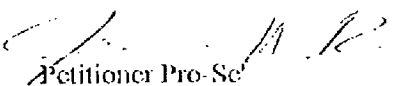
That on the 21 day of September, 2005, I personally placed in the Snake River Correctional Institution's mailing service A TRUE COPY of the following:

Petition for Supreme Court Review

I placed the above in a securely enclosed, postage prepaid envelope, to the person(s) named at the places addressed below:

Office of the Attorney General
400 Justice Building
1162 Court Street NE
Salem, OR 97301-4096

Oregon State Court Administrator
Records Section
Supreme Court Building
1163 State Street NE
Salem, OR 97301-2563


Petitioner Pro-Se
James Arthur Ross
SID#12599830
Snake River Correctional Inst.
777 Stanton Blvd.
Ontario, Oregon. 97914-8335.
Staff liaison: Ms. J. Bishop
(541) 881-4639

IN THE SUPREME COURT OF THE
STATE OF OREGON

STATE OF OREGON,

Plaintiff-Respondent,
Respondent on Review,

v.

JAMES ARTHUR ROSS,

**Defendant-Appellant,
Petitioner on Review.**

Douglas County Circuit Court
No. 04CR04291

SC S52785
CA A128651

ORDER DE NYING RE VIEW

Upon consideration by the court.

The court has considered the petition for review and orders that it be denied.

Dated this 28th day of December 2005.

WALLACE P. CARSON, JR.
CHIEF JUSTICE

c: Mary Hazel Williams
James Arthur Ross

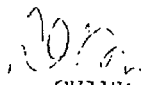
Respondent's Exhibit
#110
USDC Case No. 10-1440-HO

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,)	Douglas County Circuit
	)	Court No. 04CR0429PM
Plaintiff-Respondent,)	
)	
v.	)	CA A128651
)	
JAMES ARTHUR ROSS,	)	ORDER DENYING MOTION FOR
	)	APPOINTMENT OF COUNSEL, AND
Defendant-Appellant.	)	ORDER OF DISMISSAL.

On May 26, 2005, appellant filed a notice of appeal from an order denying a motion to amend/correct the judgment. The court determines that the order is not an appealable decision. *State v. Hart*, 188 Or App 650, 72 P3d 671 (2003) (an order in a criminal case denying a motion to correct a judgment is not appealable).

Appellant's motion for appointment of counsel is denied as moot.


CHIEF JUDGE

JUN 1 6 2005
DATE

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Respondent.

[X] No costs allowed.

Appellate Judgment

Effective Date: February 7, 2006

COURT OF APPEALS
(seal)

APPELLATE JUDGMENT

Respondent's Exhibit
#111
USDC Case No. 10-1440-HO

RECEIVED
DEC 06 2006

DEPARTMENT OF JUSTICE
IN THE CIRCUIT COURT OF THE STATE OF OREGON TRIAL DIVISION

FOR THE COUNTY OF MALHEUR

JAMES ARTHUR ROSS,

Plaintiff,

vs.

JEAN HILL,

Superintendent,

Snake River Correctional Institution,

Respondent,

County Circuit Court
Case No. 05-08-4630-M

*** FOURTH AMENDED ***
FORMAL PETITION FOR
POST-CONVICTION RELIEF

(ORS 138.510, et. Seq.)

COMES NOW, the above named Petitioner, and respectfully petitions this Court for
Post-Conviction Relief pursuant to ORS 138.510 – 138.680, and alleges as follows:

1.

Respondent, JEAN HILL, is duly appointed, qualified and acting superintendent of the
Snake River Correctional Institution of Oregon.

2.

Petitioner is unlawfully imprisoned and restrained of his liberty by the above named
respondent. Petitioner is imprisoned at Snake River Correctional Institution located at 777
Stanton Boulevard Ontario, Oregon 97914 – 8335.

3.

Petitioner's imprisonment is by virtue of a judgment and sentences imposed by the Douglas County Circuit Court in the case of *State of Oregon v. James Arthur Ross*. Trial Court Case No. 04CR0429FE; Conviction date: 10th day of June, 2004; Sentencing date: 31st day of August, 2004.

4.

Daniel Bouck represented the Petitioner during his trial court proceedings; Rebecca Duncan represented the Petitioner on direct appeal.

5.

Petitioner was originally charged with the following crimes:

Assault in the Second Degree;
Kidnapping in the First Degree;
Rape in the First Degree;
Sodomy in the First Degree
Interference with Making a Report.

6.

Petitioner went to trial and after several days at trial entered a pleading of no contest and guilty and was ultimately convicted of:

Attempted Aggravated Murder;
Rape in the First Degree;
Sodomy in the First Degree;
Sodomy in the First Degree;
Kidnapping in the First Degree;
Kidnapping in the First Degree;
Assault in the Second Degree;
Assault in the Second Degree;
Felony Assault in the Fourth Degree;

Strangulation;
Menacing; and
Interference with Making a Report.

7.

The Honorable Stephen Walker presided over Petitioner's trial and sentenced petitioner
to:

- 120 Months for the Attempted Aggravated Murder plus 36 Months Post-Prison Supervision; consecutive to all others;
- 90 Months for kidnapping in the First Degree plus 36 Months Post-Prison Supervision; consecutive;
- 90 Months for kidnapping in the First Degree plus 36 Months Post-Prison Supervision; concurrent to count 2 consecutive to all others;
- 100 Months for Rape in the First Degree plus 140 Months Post-Prison Supervision; consecutive to counts 1, 2, 3, 5-12;
- 100 Months for Sodomy in the First Degree plus 140 Months Post-Prison Supervision; consecutive to counts 1, 2, 3, 4, 7-12;
- 100 Months for Sodomy in the First Degree plus 140 Months Post-Prison Supervision; consecutive to counts 1, 2, 3, 5, 7-12;
- 70 Months for Assault in the Second Degree plus 36 Months Post-Prison Supervision; consecutive to counts 1-6 and 9-12, but concurrent with count 8;
- 70 Months for Assault in the Second Degree plus 36 Months Post-Prison Supervision; consecutive to counts 1-6 and 9-12, but concurrent with count 7;
- 90 Days in jail for Assault in the Fourth Degree, concurrent with all others;
- 1 year in jail for Strangulation, concurrent with all others;
- 1 year in jail for Menacing, concurrent with all others; and
- 1 year in jail for Interference with Making a Report.

The judgment sentenced the Petitioner to a 480 month term of imprisonment with an
additional 240 month term of Post-Prison Supervision.

8.

Documents to support this petition are not included, but will be submitted as evidence
pursuant to the Order Regarding Post-Conviction Relief Proceedings entered in this case on

1 September 8th, 2005.

2 9.

3 Petitioner by and through counsel, alleges that he was denied effective assistance of trial
4 counsel in violation of Article 1, Section 10 and 11 of the Oregon Constitution and the 6th
5 Amendment of the United States Constitution, made applicable to the states by the 14th
6 Amendment to the United States Constitution and Strickland v. Washington, in the following
7 manner:

8 a. Same claims as listed under section 11 of this Formal Petition for Post-Conviction
9 Relief.

10
11 10.

12 Petitioner by and through counsel, alleges that he was denied effective assistance of
13 Appellate counsel in violation of Article 1, Section 10 and 11 of the Oregon Constitution and the
14 6th Amendment of the United States Constitution, made applicable to the states by the 14th
15 Amendment to the United States Constitution and Strickland v. Washington, in the following
16 manner:

17 a. Same claims as listed under section 12 of this Formal Petition for Post-Conviction
18 Relief.

19
20 11.

21 Petitioner further alleges that he was denied effective assistance of trial counsel and that
22 the convictions and sentences are illegal in violation of Article 1, Section 10, 11 and 15 of the
23 Oregon Constitution and Trujillo v. Maass, and the 1st, 4th, 5th, 6th, 8th, and 14th Amendments of
24 the United States Constitution, made applicable to the states by the 14th Amendment to the

1 United States Constitution and Strickland v. Washington, in the following manner:

- 2 a. Trial counsel was ineffective in failing to withdraw from Petitioner's case as requested,
3 resulting in trial counsel remaining as Petitioner's trial counsel, where a competent
4 attorney would have notified the court himself of the conflict and requested to be
5 removed from the case and the petitioner has suffered prejudice as a result.
- 6 b. Trial counsel was ineffective in failing to file a notice of appeal on the Petitioner's
7 behalf and in fact, in the Petitioner's belief, ill-informed the appellate office by stating
8 that he was satisfied with the outcome of the trial court proceedings, resulting with the
9 petitioner being denied his right to a direct appeal and the petitioner has suffered
10 prejudice as a result.
- 11 c. Trial counsel was ineffective in failing to make and adequately preserve claims for the
12 Petitioner's direct appeal process and/or appellate process in it's entirety.
- 13 d. Trial counsel was ineffective in failing to object to the excessive post-prison
14 supervision that was imposed on the petitioner and the petitioner has suffered
15 prejudice as a result.
- 16 e. Trial counsel was ineffective in failing to file a motion to quash the indictment and
17 the petitioner has suffered prejudice as a result.
- 18 f. Trial counsel was ineffective in failing to object to the indictment for failure to state
19 an offense on count 1: Att. Agg. Murder. It merely stated that the petitioner was to
20 commit this offense to cover up another crime. It did not state how the petitioner was
21 to commit such an offense nor did it differentiate itself from the assault offenses for
22 purposes of imposing consecutive sentences and thus violating defendant's double
23 jeopardy and due process rights of the United States Constitution along with his 6th
24 amendment right to effective assistance of counsel as guaranteed to him and the

petitioner has suffered prejudice as a result.

g. Trial counsel was ineffective in failing to motion for an acquittal or a dismissal of the Attempted Aggravated Murder offense against the petitioner as all elements of the offense were not established and for lack of evidence and/or intent to support such an offense and the petitioner has suffered prejudice as a result.

h. Trial counsel was ineffective in failing to file a motion to dismiss the Kidnapping in the First Degree charge(s) against Petitioner as all elements and/or intent of kidnapping were not established and the petitioner has suffered prejudice as a result.

i. Trial counsel was ineffective in failing to challenge the indictment for failure to state a difference in the kidnapping charges, counts 2 & 3, which violated defendant's double jeopardy and due process rights of the United States Constitution along with his 6th amendment right to effective assistance of counsel as guaranteed to him and the petitioner has suffered prejudice as a result.

j. Trial counsel was ineffective in failing to motion for a merger of convictions and the petitioner has suffered prejudice as a result.

k. Trial counsel was ineffective in failing to motion for a merger of convictions in a multiplicitous and undifferentiating indictment and the petitioner has suffered prejudice as a result.

l. Trial counsel was ineffective in failing to argue that the multiple and undifferentiated charges in the indictment, ultimately ending up in multiple convictions and sentences, inflicted more punishment than justifiable in a single criminal episode and the petitioner has suffered prejudice as a result.

m. Trial counsel was ineffective in failing to file a motion to disqualify the judge based upon the judge's personal knowledge of the facts and/or for being bias, especially at

1 the sentencing phase where he stated that if the victim would have died, his mind was
2 easily made up to give the petitioner the death penalty, which he would have no
3 authority to impose, because such a sentence would have had to have been handed
4 down from a jury, especially when none of the aggravating facts were proven beyond
5 a reasonable doubt to a jury nor admitted to by the petitioner, but in making such a
6 statement showing his true intent to inflict great and/or cruel and unusual punishment
7 on the petitioner ending up in a grave injustice to the petitioner and the petitioner has
8 suffered prejudice as a result.

9 n. Trial counsel was ineffective in failing to effectively and/or fully object to and argue
10 that the consecutive sentences imposed by the trial court were unconstitutional, in
11 violation of Blakely, especially when the petitioner had pleaded not guilty to any and
12 all aggravating factors, which the trial court accepted and the petitioner has suffered
13 prejudice as a result.

14 o. Trial counsel was ineffective in failing to effectively and/or fully object to and/or
15 attack the Petitioner's sentence as to consecutive sentencing issues, Blakely issues,
16 Booker issues, single criminal episode issues, ORS 137.123 issues, and/or
17 sentencing guideline's 200- 400% rules, especially when the petitioner had pleaded not
18 guilty to any and all aggravating factors, which the trial court accepted and the
19 petitioner has suffered prejudice as a result.

20 p. Trial counsel was ineffective in failing to submit evidence that proved against the
21 district attorney's statements that the victim in this case had a collapsed lung and broken
22 ribs. This statement was used against the petitioner in the interrogation room to subtract
23 statements from the petitioner and then again during the trial and then again during the
24 sentencing phase to give the petitioner greater punishment all without any objection

1 from the petitioner's trial counsel and thus causing ineffective assistance of counsel
2 and the petitioner has suffered prejudice as a result.

3 q. Trial counsel was ineffective in failing to object when the trial court entered into
4 judicial fact finding for aggravating factors when the trial court had already accepted a
5 pleading of not guilty to any and all aggravating factors and thus causing ineffective
6 assistance of counsel and the petitioner has suffered prejudice as a result.

7 r. Trial counsel was ineffective in failing to fully explain the plea agreement to the
8 petitioner, thus Petitioner's plea pursuant to the plea agreement was not knowingly,
9 voluntarily and intelligently made. and the petitioner has suffered prejudice as a result.

10 s. Trial counsel was ineffective in failing to explain to the petitioner the consequences of
11 pleading guilty and no contest and the presumptive sentence pursuant to the Oregon
12 Sentencing Guidelines Gird, which instead ended up in several consecutive mandatory
13 minimum prison sentences pursuant to Ballot Measure 11 and the petitioner has
14 suffered prejudice as a result.

15 t. Trial counsel was ineffective in failing to inform petitioner of the serious
16 consequences of a stipulated or open - ended sentence. Trial counsel did not inform
17 petitioner of the right to have a jury decide any fact that would enhance his sentence
18 beyond the prescribed statutory maximum. Had trial counsel informed the petitioner,
19 petitioner would have elected to finish trial and the petitioner has suffered prejudice as
20 a result.

21 u. Trial counsel was ineffective in failing to object to the imposition of Ballot Measure
22 11 as it is unconstitutional and the petitioner has suffered prejudice as a result.

23 v. Trial counsel was ineffective in failing to object to prosecutorial misconduct during
24 trial phase as well as during sentencing phase and the petitioner has suffered prejudice

1 as a result.

2 w. Trial counsel was ineffective in telling the petitioner that the plea agreement was
3 different than the actual agreement entered to the court and the petitioner has suffered
4 prejudice as a result.

5 x. Trial counsel was ineffective in failing to adequately argue and fully pursue the
6 Petitioner's rights to bail and the petitioner has suffered prejudice as a result.

7 y. Trial counsel was ineffective in failing to pursue and/or acquire the expert psychiatrist
8 that defendant was requesting in this case by the name of Korr Johnson, which was
9 said to be the only qualified psychiatrist to examine the petitioner by some of the top
10 defense lawyer's in the state and the petitioner has suffered prejudice as a result.

11 z. Trial counsel was ineffective in informing the petitioner that there was no valid self
12 defense in Oregon and the petitioner has suffered prejudice as a result.

13 aa. Trial counsel was ineffective in failing to raise and argue an **ORS 163.325** defense
14 in general and/or in it's entirety and/or in at least to counts 4, 5, and 6 and the
15 petitioner has suffered prejudice as a result.

16 bb. Trial counsel was ineffective in failing to fully investigate and/or subpoena witnesses
17 including by not limited to:

- 18 1. Maryella Brown;
- 19 2. Tammy Mendenhall;
- 20 3. Tammy Dean Mendenhall;
- 21 4. Peirce Pippen;
- 22 5. Lydia Pippen;
- 23 6. Kevin Rucker;
- 24 7. Ken Madison;

1 8. Ken (Last name unknown), victim's boss at Dairy Quenn;

2 9. Angela Cheridan;

3 10. Ex-Girlfriends.

4 cc. Trial counsel was ineffective in failing to use all witnesses available to him and to let
5 the petitioner know and/or have copies of all the statements made by the witnesses
6 that did come forth and present themselves, who he still ignored and the petitioner
7 has suffered prejudice as a result.

8 dd. Trial counsel was ineffective in coercing the petitioner into making him take a plea
9 agreement and to plea to all counts against him and against his will and best interest
10 and the petitioner has suffered prejudice as a result.

11 ee. Trial counsel was ineffective in failing to discuss with the petitioner his competency
12 to stand trial and the petitioner has suffered prejudice as a result.

13 ff. Trial counsel was ineffective in failing to argue the Petitioner's competency at the
14 time of the accused offenses took place, in the least, for intent purposes especially
15 when the victim was petitioner wife, the petitioner has suffered prejudice as a result.

16 gg. Trial counsel was ineffective in failing to get the Petitioner's trial moved as it was a
17 highly publicized and political case that affected the Petitioner's rights to a fair trial
18 and the petitioner has suffered prejudice as a result.

19 hh. Trial counsel was ineffective when he violated the petitioner's attorney client
20 privileges and caused a breach of contract when he gave statements made by the
21 petitioner, at counsel's request, concerning the case over to the district attorney and
22 the petitioner has suffered prejudice as a result.

23 ii. Trial counsel was ineffective in failing to object to the trial court's abuse of discretion
24 when trial judge decided what was in the best interests of the petitioner and thus

1 causing ineffective assistance of counsel and violating petitioner's rights to due
2 process of the law and petitioner has suffered prejudice as a result.

3 jj. Trial counsel was ineffective in failing to help the petitioner in obtaining substitute
4 counsel where an effective attorney would have helped and file a motion to withdraw,
5 which he has in fact done in other previous cases and in fact the petitioner asserts that
6 trial counsel did totally the opposite and in fact was laughing at the petitioner in court
7 when he was attempting to have him replaced and the petitioner has suffered
8 prejudice as a result.

9 kk. Trial counsel was ineffective in failing to object to the trial court's abuse of discretion
10 in ignoring the petitioner's several requests for substitute counsel and failing to
11 conduct an evidentiary hearing on the matter to thoroughly investigate and/or to hear
12 the petitioner out on his claims and accusations as stated in this petition and in the
13 trial memorandum in support of this petition as to the ineffectiveness and conflicts of
14 interest of petitioner's trial counsel, caused ineffective assistance of counsel and in
15 fact made the petitioner proceed to trial without effective assistance of counsel and
16 the petitioner has suffered prejudice as a result.

17 ll. Trial counsel was ineffective in failing to object, motion, file and/or argue for an
18 extension of time when the petitioner told the court that he wished to retain an
19 attorney, after the court stated that they would not give him substitute counsel and
20 inquired that there was in fact someone wanting to retain counsel for the petitioner,
21 and thus not giving the petitioner enough time to obtain such an attorney when the
22 financial funds to obtain such attorney was coming from another country and
23 therefore forcing petitioner to proceed without effective assistance of counsel and
24 petitioner has suffered prejudice as a result.

1 mm. Trial counsel was ineffective when counsel and the petitioner had several bad
2 incidents where they had several bad words between each other. One in particular,
3 was when trial counsel stated to the petitioner that he believed he was guilty of all
4 charges and that he would not prepare a defense for him because he believed that
5 petitioner deserved whatever the district attorney wanted to give him. Then the
6 petitioner replied that this is why he did not want him on his case because he was
7 doing nothing but sabotaging the case and that he was fired, although despite
8 petitioner's several attempts to fire his counsel he was unsuccessful. This resulted in a
9 total break in communication between petitioner and his counsel. Petitioner's time
10 was consumed in trying to fire and have his counsel replaced that it left petitioner
11 with no time or legal materials to prepare a defense for himself. Therefore, he was
12 forced to proceed with this counsel, Daniel Bouck, that petitioner had absolutely no
13 faith in, was disloyal, had no defense prepared for him and as far as the petitioner
14 was and is concerned purposely sabotaging his case and the petitioner has suffered
15 prejudice as a result.

16 nn. Trial counsel was ineffective in failing to object when the trial court accepted a
17 pleading involving a not guilty plea to one of the counts and in fact counsel should
18 have asked for a brief recess to re-assure that the petitioner knew what he was doing
19 so that it could be said that he was knowingly willingly and intelligently making the
20 plea and instead the petitioner's counsel told the court that the petitioner obviously did
21 not understand what he was doing and continued to enter the plea that he thought was
22 appropriate and thus causing ineffective assistance of counsel and violating
23 petitioner's rights to due process of law and petitioner has suffered prejudice as a
24 result.

- 1 oo. Trial counsel was ineffective in failing to explain and give knowledge to the
2 petitioner concerning the case and charges and/or any defenses available to him and
3 the petitioner has suffered prejudice as a result.
- 4 pp. Trial counsel was ineffective in failing to object to the use of less than 7 member
5 grand jury on the indictment and when it was amended and the petitioner has
6 suffered prejudice as a result.
- 7 qq. Trial counsel was ineffective in failing to object, motion, file and/or argue that there
8 was an insufficient law library in the county jail for the petitioner to prepare a defense
9 or research his case and the petitioner has suffered prejudice as result.
- 10 rr. Trial counsel was ineffective in failing to make sure that the trial transcripts were
11 being properly and thoroughly preserved for the petitioner and thus causing
12 ineffective assistance of counsel and violating the petitioner's rights to due process of
13 the law and petitioner has suffered prejudice as a result.
- 14 ss. Trial counsel was ineffective when he continued to override the petitioner's pleading
15 and enter his own plea's, making them for the petitioner, after counsel had stated, on
16 the record, that the petitioner did not understand what he was doing in the pleading,
17 thus causing ineffective assistance of counsel and denying petitioner of his rights to
18 due process of the law and the petitioner has suffered prejudice as a result.
- 19 tt. Trial counsel was ineffective in obtaining and presenting all evidence available and
20 the petitioner has suffered prejudice as a result.
- 21 uu. Trial counsel was ineffective in failing to move to suppress the fruits of the search
22 of petitioner's house by police which violated petitioner's 4th amendment rights and
23 also petitioner's statements made to police and the petitioner has suffered prejudice
24 as a result.

1 vv. Trial counsel was ineffective in failing meaningfully to oppose the prosecution's case
2 and the petitioner has suffered prejudice as a result.

3 ww. Trial counsel was ineffective when he told the petitioner that there was no defenses
4 available to him against the charges and the petitioner has suffered prejudice as a
5 result.

6 xx. Trial counsel was ineffective when trial counsel told the petitioner that he could not
7 retract his plea's after petitioner realized that he would not be receiving the plea
8 agreement of the 120 months concurrent sentencing and the petitioner has suffered
9 prejudice as a result.

10 yy. Trial counsel was ineffective when there was a conflict of interests when he
11 previously represented the Petitioner's mother and was in fact fired by the Petitioner's
12 mother when he tried to make her admit to things that she did not do and accept a
13 plea bargain for life in prison for murder and refused to help her otherwise, which
14 coincidentally is the same type of representation that the petitioner has endured from
15 this counsel with the only difference that Petitioner's mother was able to fire trial
16 counsel Daniel Bouck where as the petitioner was not so fortunate, thus leaving the
17 entire family scared out of their minds knowing what the outcome of the trial would
18 be with the petitioner being represented by this counsel Daniel Bouck, putting more
19 stress, strain and the same if not more scarce on the petitioner with no real options
20 left to him but to proceed with this counsel and suffer the outcomes, which ended up
21 with the petitioner pleading out to all of the charges against him with a false
22 understanding of what he would be receiving as a result of his pleading, where the
23 Petitioner's true will and intent was to finish trial and the petitioner has suffered
24 prejudice as a result.

12.

Petitioner further alleges that he was denied effective assistance of appellate counsel in violation of Article 1, Section 10 and 11 of the Oregon Constitution and Trujillo v. Maass, and the 6th Amendment of the United States Constitution, made applicable to the states by the 14th Amendment to the United States Constitution and Strickland v. Washington, in the following manner:

- a. Appellate counsel was ineffective in failing to file a notice of appeal and petitioner has suffered prejudice as a result.
- b. Appellate counsel was ineffective in failing to investigate Petitioner's case and petitioner has suffered prejudice as a result.
- c. Appellate counsel was ineffective in failing to file a brief on Petitioner's behalf and petitioner has suffered prejudice as a result.
- d. Appellate counsel was ineffective in failing to file a merits brief on Petitioner's behalf and petitioner has suffered prejudice as a result.
- e. Appellate counsel was ineffective in failing to file a Ander brief on Petitioner's behalf and petitioner has suffered prejudice as a result.
- f. Appellate counsel was ineffective in failing to bring to the court's attention "anything in the record that might arguably support the appeal" and petitioner has suffered prejudice as a result.
- g. Appellate counsel was ineffective when Petitioner was denied to have his case handed over to an appellate attorney and petitioner has suffered prejudice as a result.
- h. Appellate counsel was ineffective in assuming the Petitioner's claims were frivolous and petitioner has suffered prejudice as a result.

- 1 i. Appellate counsel was ineffective when they were ill-informed as to the merits of
2 Petitioner's claims by the Petitioner's trial counsel and petitioner has suffered prejudice
3 as a result.
- 4 j. Appellate counsel was ineffective in failing to attack the Petitioner's sentences as to
5 consecutive issues, Blakely issues, Booker issues, single criminal episode issues,
6 **ORS** 137.123 issues and/or sentencing guideline's 200 – 400% rules, especially when
7 the trial court accepted a pleading of not guilty to any and all aggravating factors and
8 petitioner has suffered prejudice as a result.
- 9 k. Appellate counsel was ineffective for failing to appeal the courts imposition of
10 multiple undifferentiated convictions in a single criminal episode and petitioner has
11 suffered prejudice as a result.
- 12 l. Appellate counsel was ineffective in failing to raise a claim as to Ballot Measure 11 as
13 it is unconstitutional and petitioner has suffered prejudice as a result.
- 14 m. Appellate counsel was ineffective in failing to raise a claim as to the imposition of
15 consecutive Ballot Measure 11 sentences and petitioner has suffered prejudice as a
16 result.
- 17 n. Appellate counsel was ineffective in failing to raise a claim as to the trial court's
18 abuse of discretion when trial judge decided what was in the best interests of the
19 petitioner and thus causing ineffective assistance of counsel and/or violating the
20 petitioner's rights to due process of the law and petitioner suffered prejudice as a result.
- 21 o. Appellate counsel was ineffective in failing to raise a claim as to the trial court's
22 abuse of discretion and/or ineffective assistance of counsel when the trial court
23 accepted a pleading involving a not guilty plea to one of the counts and thus causing
24 ineffective assistance of counsel and/or violating petitioner's rights to due process of

1 the law and petitioner has suffered prejudice as a result.

2 p. Appellate counsel was ineffective in failing to raise a claim as to the insufficient law
3 library at the petitioner's county jail for him to prepare a defense and thus causing
4 ineffective assistance of counsel and/or violating petitioner's rights to due process of
5 the law and petitioner has suffered prejudice as a result.

6 q. Appellate counsel was ineffective in failing to obtain much needed documents to
7 properly address an appeal such as the proper case files and trial transcripts and in the
8 least provided the petitioner with said information, thus causing ineffective assistance
9 of counsel and/or violating the petitioner's rights to due process of the law and
10 petitioner has suffered prejudice as a result.

11 r. Appellate counsel was ineffective in failing to raise a claim as to the faulty and "cut-
12 up" trial court transcripts making it very difficult and/or impossible for the petitioner
13 to thoroughly and fully attack, argue and/or raise and thoroughly exhaust every claim
14 possible, causing ineffective assistance of counsel and/or violating the petitioner's
15 rights to due process of the law and petitioner has suffered prejudice as a result.

16 s. Appellate counsel was ineffective in not advising the petitioner of his rights to pursue
17 a direct appeal on his own after counsel refused to pursue an appeal on his behalf and
18 in the least point him in the right direction to do so with the needed information to do
19 so, thus causing ineffective assistance of counsel and/or violating the petitioner's rights
20 to due process of the law and petitioner has suffered prejudice as a result.

21 t. Appellate counsel was ineffective in failing to raise a claim as to the trial court's abuse
22 of discretion when trial court accepted and allowed petitioner's trial counsel to
23 continue to override the petitioner's pleading and enter his own plea's, making them
24 for the petitioner, after the petitioner's trial counsel had stated, on the record, that the

1 petitioner did not understand what he was doing in the pleading, thus causing
2 ineffective assistance of counsel and/or violating the petitioner's rights to due process
3 of the law and the petitioner has suffered prejudice as a result

4 u. Appellate counsel was ineffective in failing to raise a claim as to the trial court's
5 abuse of discretion when petitioner told the court that he wished to obtain an attorney,
6 after the court stated that they would not give him substitute counsel and inquired that
7 there was in fact someone wanting to obtain counsel for the petitioner, by not giving
8 the petitioner enough time to obtain such an attorney when the financial funds to
9 obtain such attorney was coming from another country and therefore forcing petitioner
10 to proceed without effective assistance of counsel and/or violating the petitioner's
11 rights to due process of the law and petitioner has suffered prejudice as a result.

12 v. Appellate counsel was ineffective in failing to raise a claim as to the trial court's abuse
13 of discretion in ignoring the petitioner's several requests for substitute counsel and
14 failing to conduct an evidentiary hearing on the matter to thoroughly investigate
15 and/or to hear the petitioner out on his claims and accusations as stated in this petition
16 and in the trial memorandum in support of this petition as to the ineffectiveness and
17 conflicts of interest of petitioner's trial counsel, caused ineffective assistance of
18 counsel and in fact made the petitioner proceed to trial without effective assistance of
19 counsel and/or violating the petitioner's rights to due process of the law and the
20 petitioner has suffered prejudice as a result

21 w. Trial counsel was ineffective in failing to object when the trial court entered into
22 judicial fact finding for aggravating factors when the trial court had already accepted a
23 pleading of not guilty to any and all aggravating factors and thus causing ineffective
24 assistance of counsel and/or violating the petitioner's rights to due process of the law

1 and the petitioner has suffered prejudice as a result.

2 13.

3 Taken alone or in any combination, the above has caused prejudice to the Petitioner,
4 denied Petitioner of his due process of law and effective assistance of counsel as promised by the
5 State Constitution and the United States Constitution.

6
7 14.

8 Taken alone or in any combination, the above has caused prejudice to the Petitioner
9 where he has been subjected to several multiplicitous and undifferentiating convictions resulting
10 in a mandatory minimum sentence of 480 months with 240 months post-prison supervision,
11 denied Petitioner of his protection against cruel and unusual punishment and his rights to
12 rehabilitation and his due process of law and effective assistance of counsel rights and/or
13 birthrights as promised by the Oregon and United States Constitutions.

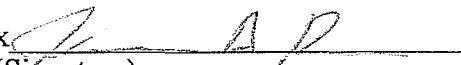
14
15 WHEREFORE, Petitioner prays for an Order:

- 16 a. Vacating his convictions and sentences in Douglas County Circuit Court in the case of
17 State of Oregon v. James Arthur Ross, Case No. 04CR0429FE;
18 b. Granting a new trial in Douglas County Circuit Court in the case of State of Oregon v.
19 James Arthur Ross, Case No. 04CR0429FE;
20 c. Release Petitioner from custody;
21 d. Grant a delayed direct appeal;
22 e. Remand the case of Douglas County Circuit Court in the case of State of Oregon v.
23 James Arthur Ross, Case No. 04CR0429FE;
24 f. Modify the sentences: and

1 g. Grant such further relief as this Court deems just and proper.
2
3
4

5 **DATED** this 26th day of October, 2006.
6
7

8 Respectfully Submitted By,
9
10

11 x 
12 (Signature)
13 James Arthur Ross
14 SID# 12599830
15 Snake River Correctional Institution
16 777 Stanton Boulevard
17 Ontario, Oregon 97914 – 8335
18 (541) 881-4639
19
20
21
22

23 *cc: file*
24

DECLARATION UNDER PENALTY OF PERJURY

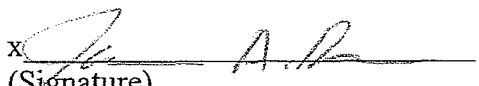
In the matter of this FORMAL PETITION FOR POST-CONVICTION RELIEF:

I, JAMES ARTHUR ROSS, the Petitioner in the foregoing FORMAL PETITION FOR POST-CONVICTION RELIEF, state under oath, that I have read and know the content of this Petition, and I declare or verify under penalty of perjury that the facts set forth are true and correct to the best of my knowledge and belief and tht all the documents and exhibits included in, or attached to the Petition are authentic to the best of my knowledge and belief.

The said FORMAL PETITION FOR POST-CONVICTION RELIEF is well founded in law.

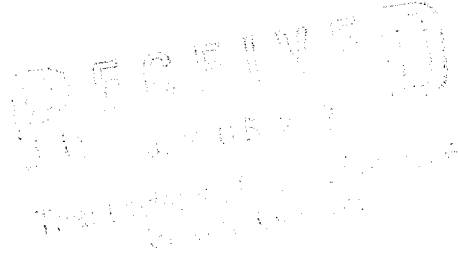
DATED this 26th day of October, 2006.

Respectfully Submitted By,

x: 
(Signature)
James Arthur Ross
SID# 12599830
Snake River Correctional Institution
777 Stanton Boulevard
Ontario, Oregon 97914 – 8335
(541) 881-4639

cc: file

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4 (541) 473-3141 telephone
5 (541) 473-2651 fax
6
7
8
9



10 CIRCUIT COURT FOR THE STATE OF OREGON
11 FOR THE COUNTY OF MALHEUR
12

13 JAMES ARTHUR ROSS,

Petitioner,

Case No. 05-08-4630M

TRIAL MEMORANDUM

14
15 vs.

16 JEAN HILL, Superintendent,
17 Snake River Correctional Institution,

Defendant.

18
19 Petitioner challenges his convictions in the State of Oregon vs. James Arthur Ross,
20 Douglas County Circuit Court Case Number 04CR0429FE. Petitioner was charged in an
21 Amended Indictment with the following charges: Attempted Aggravated Murder, two counts of
22 Kidnapping in the Second Degree, Rape I, two counts of Sodomy I, two counts of Assault II,
23 Felony Assault IV, Strangulation, Menacing, and Interfering with a Police Report. On the
24 fourth day of a jury trial, petitioner pled No Contest to the following charges: Attempted
25 Aggravated Murder, both counts of Kidnapping I, Rape I, the first count of Sodomy I, Felony
26
27

1 Assault IV, and Interfering with a Police Report. Petitioner pled guilty to the second count of
2 Sodomy I, both counts of Assault II, Strangulation, and Menacing. According to the Plea
3 Statement signed by petitioner, his attorney, and the District Attorney, there was no agreement
4 as to concurrent or consecutive sentences. Ultimately, petitioner received a 480 months
5 prison sentence at his sentencing hearing on August 31, 2004. Petitioner received the following
6 sentence: a 120 months prison for the Attempted Aggravated Murder charge; 90 months in
7 prison for both Kidnapping I charges, concurrent to each other but consecutive to the
8 Attempted Aggravated Murder; a consecutive 100 months in prison for the Rape I conviction,
9 100 months in prison for both Sodomy I convictions, concurrent to each other but consecutive
10 to the other charges; 70 months prison sentences for both Assault II conviction, concurrent to
11 each but consecutive to the other charges; and concurrent jail time for the remaining charges.
12 Petitioner raises seventy five issues in his Fourth Amended Formal Petition. Petitioner has also
13 filed a motion with the court to file a Fifth Amended Petition. Daniel Bouck represented
14 Petitioner during trial court procedures. Rebecca Duncan represented Petitioner on direct
15 appeal.

16
17 It is petitioner's position that trial counsel failed to advise him, and appellate counsel
18 failed to preserve as an issue for appellate review, that as a matter of law, he could not be
19 convicted of Kidnapping I. Petitioner argues that he did not kidnap his wife, but instead asked
20 her to leave. Because there was no intent to interfere substantially with his wife's liberty and
21 she was only moved a minimal distance, a reasonable jury could not convict petitioner of that
22 charge. State v. Wolleat, 338 Or 469 (2005); State v. Sparklin, 203 Or.App. 581 (2006).
23 Thus, if his trial counsel had correctly told petitioner of the required mental element to prove
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1 kidnapping, petitioner would not have pled no contest to the kidnapping charges.

2 Though one count alleges a purpose of causing physical injury to the victim and the
3 other alleges a purpose of terrorizing the victim, Petitioner argues that trial counsel failed to
4 argue, and appellate counsel failed preserve as an issue for appellate review, that both
5 Kidnapping I charges should have merged for sentencing purposes. *State v. White*, 202
6 Or.App. 1 (2005). Petitioner also argues that trial counsel should have argued, and appellate
7 counsel should have preserved for appellate review, that both Sodomy I convictions should
8 have merged at sentencing. *Id.* The charges are pled identically and allege the same victim. It
9 is petitioner's position that at best there was only one sodomy of his wife. Assuming but not
10 conceding there was more than one sodomy and one kidnapping, there is no finding of a
11 separation from other violations by a sufficient pause to afford the petitioner an opportunity to
12 renounce his criminal intent. ORS 161.067(3); *James v. Cupp*, 65 Or.App. 377 (1983).

13 Petitioner also argues that the identical charges for both counts of Assault II, counts 7
14 and 8, violate petitioner's due process right to notice of charges because he could not
15 effectively differentiate among the charges. Trial counsel failed to argue this issue and
16 appellate counsel failed to preserve this issue for appellate review. *Valentine v. Konteh*, 395
17 F.3d 626 (C.A.6 (Ohio) 2005).

18 Petitioner objects to the imposition of consecutive sentences in his underlying case.
19 Trial counsel never argued, and appellate counsel did not preserve for appellate review that
20 there was no findings made by the court as required by ORS 137.123 to justify consecutive
21 sentences. *State v. Garcia*, 288 Or. 413, (1980); *State v. Warren*, 168 Or.App. 1, (2000).

22 Trial counsel for petitioner concedes the recent holding *State v. Tanner*, that held the
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1 Apprendi rule does not apply to findings used to validate the imposition of consecutive
2 sentences. Petitioner respectfully disagrees with this decision and argues he was sentenced to
3 illegal and unconstitutional consecutive sentences. Petitioner argues the logic of *Blakely v.*
4 *Washington*, 124 S. Ct. 2531 (2004) which extended the ruling of *Apprendi v. New Jersey*, 530
5 U.S. 466 (2000) should be applied to his case. These cases require that a jury make all factual
6 findings required for an enhanced sentence under Oregon's sentencing guidelines. See *State v.*
7 *Sawatzky*, 195 OrApp 159 (2004). Petitioner's claims were previously unavailable on
8 collateral review because the right had not been recognized until *Blakely*.
9

10
11 In *Tyler v. Cain*, 533 U.S. 466 (2001), the United States Supreme Court held that a new
12 rule of criminal procedure may be made retroactive through a series of that Court's cases:

13 Justice Breyer observes that this Court can make a rule retroactive over the course of
14 two cases. We do not disagree that, with the right combination of holdings, the Court
15 could do this... Multiple cases can render a new rule retroactive only if the holdings in
16 those cases necessarily dictate retroactivity of the new rule.

17 *Tyler*, 533 U.S. at 666. The Supreme Court has explained that the second exception to
18 the *Teague v. Lane*, 489 U.S. 288 (1989) prohibition of the retroactive application of new rules,
19 sanctions retroactivity if the new rule substantially promotes two discrete values: the
20 fundamental fairness of the underlying proceeding; and the accuracy of that proceeding. See,
21 e.g., *Saffle v. Parks*, 494 U.S. 484, 495 (1990). Thus, under *Tyler's* holding, *Teague's* second
22 exception reduces to the logical syllogism: If A (protects fundamental fairness) and B
23 (accuracy enhancing), then C (retroactive application of the rule).
24

25 Logic compels the retroactive application of *Apprendi/Blakely* given the Supreme
26 Court's recognition, in *Shriro*, that the *Apprendi* rule implicates fundamental fairness, and, in
27

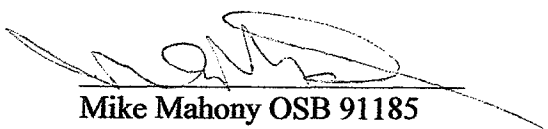
1 the host of Supreme Court decisions, such as *In re Winship*, 397 U.S. 358 (1970), of the
2 heightened accuracy afforded by the criminal law's standard of proof beyond a reasonable
3 doubt.
4

5 In the context of the *Teague* syllogism: *Shriro* establishes A (fundamental fairness). In
6 *re Winship* (and the many Supreme Court cases building on it), establishes B (reasonable doubt
7 standard seriously enhances accuracy). Therefore the rule applies retroactively. *Teague*; *Tyler*.

8 Trial counsel's performance was deficient and prejudiced petitioner. Trial counsel's
9 errors were so serious that counsel was not functioning as counsel guaranteed by the Sixth
10 Amendment and that the errors were so serious that petitioner's conviction is not reliable.
11 Taken in part or in together, trial counsel's numerous errors prejudice the result below to the
12 extent that there is a reasonable probability that but for his errors, the result below would have
13 been different. *Strickland vs. Washington*, 466 US 668 (1984); *Krummacher v. Gierloff*, 290
14 OR 867, 627 P2d 458 (1981).
15

16
17 Petitioner respectfully asks that this court vacate his sentences in the above entitled
18 cases and remand this case to the trial court.
19

20 DATED this 1 day of January, 2006.
21

22
23 
24 Mike Mahony OSB 91185
25 Attorney for Petitioner
26
27

